

11-16-92  
Vol. 57 No. 221  
Pages 53981-54164

Monday  
November 16, 1992

**Briefings on How To Use the Federal Register**  
For information on briefings in Washington, DC, and  
Albuquerque, NM, see announcement on the inside cover  
of this issue.







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## THE FEDERAL REGISTER

### WHAT IT IS AND HOW TO USE IT

- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
  2. The relationship between the Federal Register and Code of Federal Regulations.
  3. The important elements of typical Federal Register documents.
  4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### ALBUQUERQUE, NM

- WHEN:** December 8, at 9:00 am
- WHERE:** University of New Mexico  
Continuing Education Bldg., Room 1  
1634 University Blvd., NE  
Albuquerque, NM
- RESERVATIONS:** Julie Stone  
505-768-3532

### WASHINGTON, DC

- WHEN:** November 30, at 9:00 am
- WHERE:** Office of the Federal Register  
Seventh Floor Conference Room  
800 North Capitol Street, NW, Washington, DC
- RESERVATIONS:** 202-523-4534



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**Electronic Bulletin Board**

Free Electronic Bulletin Board service for Public Law Numbers and the Federal Register Table of Contents is available on 202-275-1538 or 275-0920.



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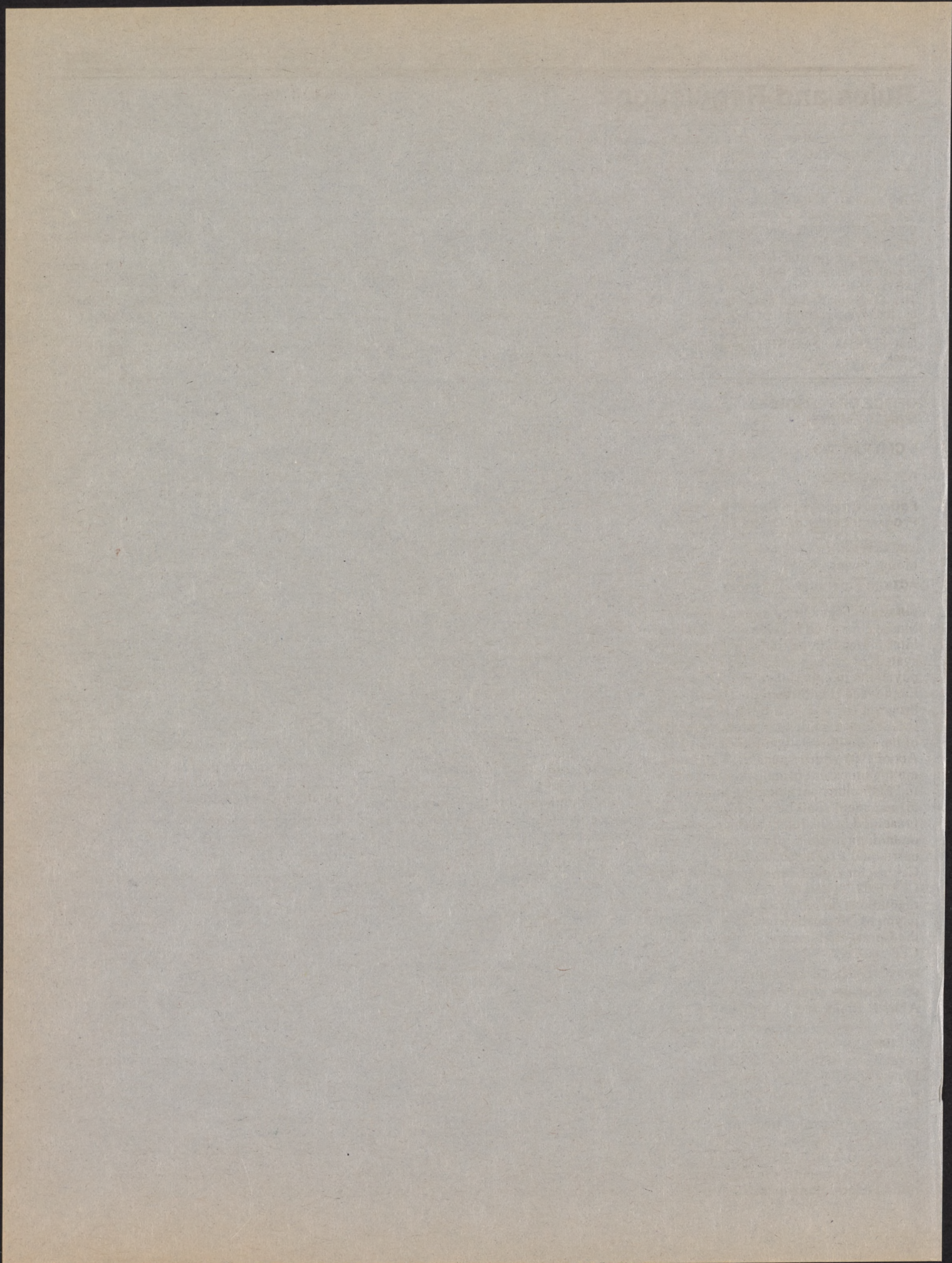
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# Rules and Regulations

Federal Register

Vol. 57, No. 221

Monday, November 16, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 890

RIN 3206-AE68

### Federal Employees Health Benefits Program: Letter of Credit Provisions

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is making final its interim regulations that reflect a revised system of making recurring premium payments to experience-rated Federal Employees Health Benefits (FEHB) Program carriers on a letter of credit (LOC) basis; implement section 7002(b) of the Omnibus Budget Reconciliation Act of 1990 which specifies that, to the maximum extent practicable, payments to FEHB plans participating in an LOC arrangement shall be made on a checks-presented basis; relocate the regulations on minimum standards for health benefit carriers at 5 CFR 890.202 to the Contractor Qualifications section at 48 CFR 1609.70; and relocate the regulations on recurring premium payments to carriers at 5 CFR 890.505 to the Contract Financing section at 48 CFR 1632.170.

**EFFECTIVE DATE:** December 16, 1992.

**FOR FURTHER INFORMATION CONTACT:** Abby L. Block, (202) 606-0191.

**SUPPLEMENTARY INFORMATION:** On April 20, 1992, OPM published interim regulations in the Federal Register (57 FR 14323 and 57 FR 14358) that updated part 890 of title 5 of the Code of Federal Regulations (CFR) and 48 CFR parts 1602, 1609, 1632 and 1652, the Federal Employees Health Benefits Acquisition Regulation (FEHBAR), with regard to the payment of premiums to experience-rated Federal Employees Health

Benefits Program (FEHBP) carriers on a letter of credit (LOC) basis, and relocated two sections from title 5 to title 48 of the CFR where they more appropriately belong.

OPM received written comments from an association representing health maintenance organizations. The commenter stated that in conjunction with the relocation of the regulations on recurring premium payments made to FEHBP carriers from title 5 to title 48 of the CFR, OPM has the responsibility to detail the premium payment and enrollment data responsibilities of Federal employing agencies in the FEHBAR.

As noted by the commenter, OPM does provide instructions to Federal agencies on transmitting and reconciling enrollment information to carriers in Subchapter S19 of Federal Personnel Manual Supplement 890-1. We are not prepared at this time to include these requirements in the FEHBAR and, in fact, could not include it in this final regulation because of the need to offer a public comment period.

The commenter also recommended that OPM improve the administrative system of premium payments due FEHBP carriers by developing more effective management information systems. The commenter believes that, at a minimum, such a system should include centralized eligibility and payroll reporting.

OPM understands the commenter's concerns and has been working with Federal agencies on a number of efforts to improve the administration of premium payments due FEHBP carriers.

One step OPM has taken is to institute new requirements for both employing agencies and OPM to provide enrollment and premium information to participating prepaid plans on a quarterly basis. These new procedures will improve the effectiveness of the reconciliation process and ensure the accurate reporting of financial data.

Another requirement is the inclusion of two contact points for the Standard Form (SF) 2809. The form is currently being revised to include both a personnel and payroll point-of-contact. The personnel contact should be able to provide the carriers with duplicate copies of SF 2809s and provide an effective date of coverage. The payroll contact should be able to answer questions concerning money submitted

to OPM and any adjustments for overpayments or underpayments.

In addition, OPM has initiated a major project intended to enhance its management of the FEHBP. An objective of the FEHB Data and Reconciliation Initiative includes the implementation of a process that ensures participating carriers receive timely and correct premiums and can effectively reconcile discrepancies in enrollment with employers. This will be accomplished by providing detailed enrollment information to all participating carriers each time they are paid premiums or premiums are made available to their LOC accounts.

We believe that the initiatives adequately address the commenter's concerns.

### E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

### Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect the administrative procedures used by OPM and FEHB plans.

### List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health insurance, Retirement.

U.S. Office of Personnel Management

Douglas A. Brook

Acting Director.

Accordingly, under the authority of 5 U.S.C. 8913, OPM is adopting its interim regulations under 5 CFR part 890 published on April 20, 1992 (57 FR 14323), as final rules without change.

[FR Doc. 92-27611 Filed 11-13-92; 8:45 am]

BILLING CODE 6325-01-M

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

### 9 CFR Parts 320 and 381

[Docket No. 92-025F]

### Obtaining Registration Forms

**AGENCY:** Food Safety and Inspection Service, USDA.



**ACTION:** Final rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is amending the Federal meat and poultry products inspection regulations to accurately reflect the name of the office from which individuals wishing to engage in business as meat or poultry products brokers, renderers, animal food manufacturers and other businesses specified in the Federal meat and poultry products inspection regulations may obtain the required registration form. This final rule corrects incorrect information, making it easier for meat or poultry products brokers, renderers, animal food manufacturers and other businesses to obtain the form.

**EFFECTIVE DATE:** November 16, 1992.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ralph Stafko, Director, Policy Office, Policy Evaluation and Planning Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 720-8168.

**SUPPLEMENTARY INFORMATION:****Executive Order 12291**

The Administrator, Food Safety and Inspection Service, has determined in accordance with Executive Order 12291 that this final rule is not a "major rule." It will not result in an annual effect on the economy of \$100 million or more. There will be no major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have a significant adverse effect on competition, employment, investment, productivity, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This rule only corrects the office from which required registration forms may be obtained.

**Executive Order 12778**

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect, and all applicable administrative procedures must be exhausted before any judicial challenge to its provisions or their application. Those administrative procedures are set forth in the rules governing proceedings at 9 CFR parts 335 and 381, subpart W.

**Effect on Small Entities**

The Administrator, Food Safety and Inspection Service, has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C.

601). This final rule places no new requirements on industry. It simply corrects and updates from whom registration forms may be obtained.

**Background**

Sections 320.5(a) and 381.179(a) of the Federal meat and poultry products inspection regulations require that any person wishing to engage in business as a meat or poultry products broker, renderer, animal food manufacturer or other specified businesses must file a registration form with the Administrator, Food Safety and Inspection Service. The person must provide, among other things, their name, and the address of each place of business, within 90 days of beginning to engage in such business. This form may be obtained from the Food Safety and Inspection Service. The agency designation currently listed in the regulations is incorrect, which may lead to confusion and delay in obtaining the required form. Accordingly, FSIS is correcting the regulations.

Because this amendment merely corrects and updates information on where forms may be obtained, it is found upon good cause that public participation in this rulemaking procedure is impracticable and unnecessary, and good cause is found for making the amendment effective less than 30 days after publication in the *Federal Register* (5 U.S.C. 553).

For the reasons set out in the preamble, 9 CFR parts 320 and 381 are amended as set forth below.

**List of Subjects****9 CFR Part 320**

Information and records, Meat inspection.

**9 CFR Part 381**

Information and records, Poultry products inspection.

**PART 320—RECORDS, REGISTRATION, AND REPORTS**

1. The authority citation for part 320 continues to read as follows:

Authority: 21 U.S.C. 601-695; 7 CFR 2.17, 2.55.

2. Paragraph (a) of § 320.5 is amended by revising the last sentence to read as follows:

**§ 320.5 Registration.**

(a) \* \* \* The registration form shall be obtained from the Compliance Programs, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

**PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS**

1. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 450, 21 U.S.C. 451-470, 7 CFR 2.17, 2.55.

2. Paragraph (a) of § 381.179 is amended by revising the last sentence to read as follows:

**§ 381.179 Registration.**

(a) \* \* \* The registration form shall be obtained from the Compliance Program, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

Done at Washington, DC, on November 9, 1992.

H. Russell Cross,  
Administrator, Food Safety and Inspection Service.

[FR Doc. 92-27686 Filed 11-13-92; 8:45 am]

BILLING CODE 3410-DM-M

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. 92-ANE-28; Amendment 39-8386; AD 92-21-06]

**Airworthiness Directives; Garrett Engine Division, Model TFE731 Series Turbofan Engines**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to Garrett Engine Division Model TFE731-2 and -3 series turbofan engines. This action requires the removal of certain suspect third stage low pressure turbine (LPT) rotor disks identified by serial number, and replacement with serviceable disks. This amendment is prompted by results of an investigation that was conducted by the manufacturer subsequent to an Auxiliary Power Unit high pressure turbine disk separation due to random oxide inclusions and stringers. The actions specified in this AD are intended to prevent an uncontained engine failure.

**DATES:** Effective November 27, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director,



of the Federal Register as of November 27, 1992.

Comments for inclusion in the Rules Docket must be received on or before January 15, 1993.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-ANE-28, 12 New England Executive Park, Burlington, Massachusetts 01803-5299.

The service information referenced in this AD may be obtained from Garrett General Aviation Services Division, Distribution Center, 1944 East Sky Harbor Circle, Phoenix, Arizona 85034, telephone (602) 365-2548. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Joseph Costa, Aerospace Engineer, Propulsion Branch, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 E. Spring Street, Long Beach, California 90806-2425, telephone (310) 988-5246, fax (310) 988-5210.

**SUPPLEMENTARY INFORMATION:** The FAA has received a report of a high pressure turbine (HPT) disk hub separation on a Garrett Auxiliary Power Division TSCP700 Auxiliary Power Unit (APU) due to random oxide inclusions and stringers. This incident prompted the manufacturer to conduct an inspection and metallurgical investigation of other APU HPT disks produced from the same Waspaloy material heat lot. Analysis of 13 rotor disks determined that 7 disks had inclusions and stringers. Of these 7 disks, inclusions and stringers caused cracking in 5 disks. The investigation revealed that these material anomalies occurred in the preforming melt process.

The FAA has determined that certain third stage low pressure turbine (LPT) rotor disks installed on Garrett Model TFE731-2 and -3 series turbofan engines were manufactured from the same suspect Waspaloy material heat lot that produced the APU HPT rotor disks. Since the LPT rotor disks are similar in manufacture and operated at stress levels higher than the APU HPT rotor disks, the FAA has determined that cracking is also likely in these LPT rotor disks. This condition, if not corrected, could result in an uncontained engine failure.

The FAA has reviewed and approved the technical contents of Allied-Signal

Aerospace Company, Garrett Engine Division, Alert Service Bulletin No. TFE731-A72-3474, dated April 3, 1992, that describes procedures for removal and replacement of certain third stage LPT rotor disks identified by serial number that were manufactured from a suspect Waspaloy material heat lot.

Since an unsafe condition has been identified that is likely to exist or develop on other Garrett Model TFE731-2 and -3 engines of the same type design, this AD is being issued to prevent an uncontained engine failure. This AD requires removal and replacement of certain third stage LPT disks identified by serial number. The actions are required to be accomplished in accordance with the service bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

#### Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped

postcard on which the following statement is made: "Comments to Docket Number 92-ANE-28." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

##### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-21-06 Garrett Engine Division, A Division of the Allied Signal Aerospace Company: Amendment 39-8386. Docket No. 92-ANE-28.



**Applicability:** Garrett Engine Division Model TFE731-2, -3, -3A, -3AR, and -3R turbofan engines assembled with Part Number (P/N) 3072068-X, 3072544-X, 3073015-X, or 3073115-X low pressure turbine (LPT) rotor disks identified by serial number listed in Allied-Signal Aerospace Company, Garrett Engine Division, Alert Service Bulletin (ASB) No. TFE731-A72-3474, dated April 3, 1992, installed on but not limited to Avions Marcel Dassault Falcon 10, 50, and 100, AiResearch Aviation Company 731 Jetstar, Lockheed 1329-25 (Jetstar II), Israel Aircraft Industries Ltd. 1124 Series (Westwind) and 1125 Westwind Astra, British Aerospace DH/HS/BH 125 Series, Learjet 31 (M31), 35, 36, and 55 Series, and Sabreliner NA265-65 (Sabreliner 65 and 65A Series) aircraft.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent an uncontained engine failure, accomplish the following:

(a) Remove affected third stage LPT rotor disks in accordance with the Accomplishment Instructions of Allied-Signal Aerospace Company, Garrett Engine Division, ASB No. TFE731-A72-3474, dated April 3, 1992, at the next access to the turbine rotor assembly or before accumulating 100 hours time in service after the effective date of this AD, whichever occurs first, and replace with a serviceable disk.

(b) For the purpose of this AD, access to the turbine assembly is defined as whenever the low pressure turbine module is separated from the engine.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

**Note:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The removal and replacement of the LPT rotor disk shall be done in accordance with the following Allied-Signal Aerospace Company, Garrett Engine Division, Alert Service Bulletin:

Document no.	Page no.	Date
No. TFE731-A72-3474. Total pages: 8	1-8	April 3, 1992.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Garrett General Aviation Services

Division, Distribution Center, 1944 East Sky Harbor Circle, Phoenix, Arizona 85034, telephone (602) 365-2548. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(f) This amendment becomes effective on November 27, 1992.

Issued in Burlington, Massachusetts, on October 9, 1992.

Mark C. Fulmer,

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 92-27675 Filed 11-13-92; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Parts 21 and 25

[Docket No. NM-72; Special Conditions No. 25-ANM-64]

#### Special Conditions; Embraer Model CBA-123 Airplane, Engine Cowling and Nacelle Skin Retention

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions.

**SUMMARY:** These special conditions are issued for the Embraer Model CBA-123 airplane. This is a new 19 passenger transport category airplane with a unique aft mounted turboprop propulsion system having pusher propellers. This is a novel and unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes in the Federal Aviation Regulations (FAR). These special conditions contain the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**EFFECTIVE DATE:** December 16, 1992.

**FOR FURTHER INFORMATION CONTACT:** Henry Jenkins, Standardization Branch, ANM-113, Transport Airplane Directorate, Aircraft Certification Service, FAA, 1601 Lind Ave. SW., Renton, WA 98055-4056, telephone (206) 227-2141.

#### SUPPLEMENTARY INFORMATION:

##### Background

On July 31, 1986, Embraer applied for a type certificate for their new Model CBA-123 airplane. Unlike conventional transport-category airplanes with the engines and propellers mounted forward of the wing in a tractor configuration, this 19-passenger transport-category airplane has a unique aft-fuselage

installation of engines and propellers mounted on pylons in a pusher configuration. Any lost engine cowling or nacelle skin could contact the propellers and empennage and cause catastrophic damage. These potential hazards are not adequately covered by existing regulations applicable to conventional transport category airplanes.

#### Type Certification Basis

Under the provisions of § 21.17 of the FAR, Embraer must show that the Model CBA-123 meets the applicable requirements of Subchapter C in effect on the date of application for that certificate unless: (1) Otherwise specified by the Administrator; or (2) compliance with later effective amendments is elected or required under § 21.17; and (3) special conditions are prescribed by the Administrator.

Based on the provisions of § 21.17(a)(1), the Model CBA-123 would be required to comply with part 25 through Amendment 25-60. However, Embraer has elected to comply with part 25 through Amendment 25-61 and §§ 25.571(e)(2) and 25.905(d) as amended through Amendment 25-72.

In addition to the applicable airworthiness regulations and special conditions, the Model CBA-123 must also comply with the noise certification requirements of part 36 and the engine emission requirements of part 34 (formerly Special Federal Aviation Regulation 27) in effect at the time the type certificate is issued.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.17(a)(2). These special conditions form an additional part of the type certification basis.

#### Novel or Unusual Design Feature

##### Engine Cowling and Nacelle Skin Retention

Due to the aft pylon mounting of the engines and pusher propellers, any loss of engine cowling or nacelle skin could cause catastrophic damage directly by impact with empennage mounted control surfaces or indirectly by damaging propeller blades which in turn could separate and strike the empennage. Design precautions must be taken to minimize the possible failure modes that could cause loss of engine cowling or nacelle skin.

#### Discussion of Comments

Notice of proposed special conditions No. SC-92-4-NM was published in the



Federal Register on August 4, 1992 [57 FR 34270]. One comment supporting the proposal was received.

**Conclusion:** This action affects only certain unusual or novel design features on one model of airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

#### List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for this special condition is as follows:

**Authority:** 49 U.S.C. App. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

#### The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Embraer Model CBA-123 airplane: Engine Cowling and Nacelle Skin Retention

a. Each airplane must be designed and constructed to:

(1) Preclude any inflight opening or loss of any cowling or nacelle skin which would, under any foreseeable conditions, prevent continued safe flight and landing; and

(2) Minimize the occurrence and hazardous effects of inflight opening or loss of any cowling or nacelle skin.

b. The retention system for each removable or openable cowling must:

(1) Keep the cowling closed and secured following any single failure or malfunction or probable combination of failures;

(2) Have readily accessible means of closing and securing the cowling which does not require excessive force or manual dexterity; and

(3) Have reliable provisions for effectively verifying that the cowling is secured prior to each takeoff. The provisions must address:

(i) Any effects of wear or improper adjustment; and

(ii) Any failure to properly close, latch, or lock the cowling.

c. If direct visual inspection means are used to comply with paragraph b, the provisions must be clearly evident during a preflight check using a flashlight or equivalent lighting source.

Issued in Renton, WA, on November 5, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM-100.

[FR Doc. 92-27586 Filed 11-13-92; 8:45 am]

BILLING CODE 4910-13-M

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 228

[Release Nos. 33-6966; 34-31420; IC-19085]

RIN: 3235-AF34

### Executive Compensation Disclosure; Correction

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Correction to final rules.

**SUMMARY:** This document contains a correction to the final executive and director compensation disclosure requirements that were published on October 21, 1992 [57 FR 48126].

**EFFECTIVE DATE:** On November 16, 1992.

**FOR FURTHER INFORMATION CONTACT:** Catherine T. Dixon at (202) 272-2589 or Gregg Corso (202) 272-3097, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** Effective October 21, 1992, the Commission adopted amendments to the executive and director compensation disclosure requirements applicable to proxy and information statements, registration statements and periodic reports under the Securities Exchange Act of 1934, and to registration statements under the Securities Act of 1933.<sup>1</sup> As published, the adopted rules inadvertently dropped the requirement, originally proposed,<sup>2</sup> that any registrant electing to construct its own peer issuer comparison under Item 402(I)(1)(ii)(B) of Regulation S-K<sup>3</sup> in connection with the required Performance Graph must disclose the identity of each issuer included in the group, and weight the returns of each component issuer for stock market capitalization. The same requirement applies to those registrants that select one or more issuers with similar market capitalization(s) for comparison purposes in accordance with paragraph (I)(1)(ii)(C) of Item 402.<sup>4</sup>

Accordingly, the final rules relating to executive and director compensation disclosure that were the subject of FR Document 92-25562 are corrected as follows:

<sup>1</sup> Release No. 33-6962 (October 16, 1992) [57 FR 48126].

<sup>2</sup> Instruction 4 to Proposed Item 402(k), Release No. 33-6940 (June 23, 1992) [57 FR 25982], as modified, Securities Act Release No. 6941 (July 10, 1992) [57 FR 31156].

<sup>3</sup> 17 CFR 229.402(I)(1)(ii)(B).

<sup>4</sup> 17 CFR 229.402(I)(1)(ii)(C).

## PART 229—[CORRECTED]

On page 48158, in the first column, paragraph (I) of § 229.402 [Item 402 of Regulation S-K] is amended to add a new Instruction 5 to read as follows:

### § 229.402 (Item 402) Executive compensation.

#### Instructions to Item 402(I)

5. If the registrant uses a peer issuer(s) comparison or comparison with issuer(s) with similar market capitalizations, the identity of those issuers should be disclosed and the returns of each component issuer of the group must be weighted according to the respective issuer's stock market capitalization.

By the Commission.

Dated: November 9, 1992.

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 92-27618 Filed 11-13-92; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Parts 33, 35 and 290

[Docket No. RM92-10-000; Order No. 545]

### Streamlining Electric Power Regulation

Issued November 5, 1992.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is amending its electric power regulations to delete regulations that are obsolete or require information that the Commission either no longer needs or which is readily available from other sources.

**EFFECTIVE DATE:** This final rule is effective December 16, 1992.

**FOR FURTHER INFORMATION CONTACT:** Wayne W. Miller, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street, NE Washington, DC 20426, (202) 208-0466.

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the *Federal Register* the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room



3308, at the Commission's Headquarters, 941 North Capitol Street, NE, Washington, DC 20426. The Commission's Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 8 data bits and 1 stop bit. The full text of the final rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corp., also located in room 3308, 941 North Capitol Street, NE, Washington, DC 20426.

## I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending its electric power regulations to eliminate requirements for information that the Commission no longer needs or that is readily available from other sources.

## II. Public Reporting Burden

This rule eliminates electric filing regulations that are obsolete, that require data that the Commission no longer needs, or that require data that are readily obtainable elsewhere. Consequently, the Commission's filing regulations will more accurately identify currently required data. As a result, the public should be able to identify more efficiently the types of applications and related information that the Commission requires. In particular, the Commission estimates that the final rule will reduce the public reporting burden for: FERC-519, "Corporate Applications," as a result of the deletion of certain requirements that applicants seeking authority for sale, lease or other disposition, for merger or consolidation of facilities, or for purchase or acquisition of securities of a public utility, furnish certain information and exhibits; FERC-516, "Electric Rate Schedules," as a result of: (a) The deletion of certain filing requirements for rate change applicants; (b) the deletion of certain filing requirements for public utilities collecting rates subject to refund; (c) the deletion of certain filing requirements for advance Commission approval of rate treatment for certain research, development, and demonstration expenditures; and FERC-557, "PURPA Section 133: Cost for Retail Electric Service Information," as a result

of the deletion of requirements for collection of cost-of-service information under section 133 of the Public Utility Regulatory Policies Act of 1978 (PURPA).<sup>1</sup>

The annual reporting burden for collection of information is estimated to be 614,775 hours for FERC-516, "Electric Rate Schedules," with 234 respondents, 976 hours per response and a reporting frequency of 2.7 responses per respondent; 1,700 hours for FERC-519, "Corporation Applications," with 20 respondents, 85 hours per response and a reporting frequency of 1 response per respondent; and 10,800 hours for FERC-557, "PURPA Section 133: Cost of Retail Electric Service Information," with 7 respondents, 1,543 hours per response and a reporting frequency of 1 response per respondent. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Although the Commission contemplates minimal reductions in burden hours for FERC-516 and FERC-519, the Commission contemplates a substantial reduction in burden hours for FERC-557, given the effect of this final rule in conjunction with the numerous exemptions previously granted.

Send comments regarding these burden estimates or any other aspect of the Commission's collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 (Attention: Michael Miller, Information Policy and Standards Branch, (202) 208-1415); and to the Office of Information and Regulatory Affairs of the Office of Management and Budget (Attention: Desk Officer for Federal Energy Regulatory Commission).

## III. Discussion

The Commission received six comments in response to this Notice of Proposed Rulemaking (NOPR), issued May 27, 1992.<sup>2</sup> Centenor Energy Corp. supports the Commission's proposal in its entirety. Atlantic City Electric Co. (Atlantic City Electric) and Jersey Central Power & Light Co. (Jersey Central) support the Commission's proposal to revise part 290, and do not comment on the other proposed changes. The American Public Power Association (APPA), the Western Area Power Administration (WAPA), and the

American Paper Institute (API) either oppose the Commission's proposal to delete §§ 33.2(n), 35.13(d)(6), 35.13(h)(7)(iv), 35.19a(b) (2) and (3) and part 290, or suggest revisions to those sections other than proposed in the NOPR. In addition, the Public Utilities Commission of the State of California filed a notice of intervention in this proceeding, but did not submit comments.

*Sections 33.2(b), (d), (g), (h), (i); section 33.2 (e), in part; Section 33.3, Exhibits A, B, D, and E; and Section 35.22.* None of the commenters took issue with the proposed revisions to these sections. Accordingly, for the reasons given in the NOPR, these revisions will be adopted.<sup>3</sup>

*Section 33.2(n).* This section requires that applicants seeking authority under section 203 of the Federal Power Act<sup>4</sup> to sell, lease, or otherwise dispose of jurisdictional facilities with a value in excess of \$50,000, to merge or consolidate, or to purchase or acquire the securities of another public utility, set forth in their applications the names and addresses of counsel who have provided opinions regarding the legality of the proposed transaction and of the firms of which they are members. APPA argues that this requirement should be retained because it creates virtually no reporting burden and provides two benefits. First, according to APPA, other counsel and interested parties in the case can more readily evaluate the key opinions of counsel supporting the applications. Second, if counsel rendering such opinions are fully aware that their names are an integral and public part of the filing support materials, there is additional professional incentive to exercise care with the opinion.

The Commission declines to retain § 33.2(n). Having applicants furnish the names of counsel and of their firms in no way assists this Commission in its consideration of section 203 applications. In evaluating those applications, the Commission does not rely on the opinions of counsel, but in order to meet its statutory obligation independently determines whether the proposed transactions are consistent with the public interest. The Commission does not need the names of counsel or the names of their firms to make that determination.

*Section 35.13(d)(6).* This section requires rate change applicants to file

<sup>1</sup> 16 U.S.C. 2643.

<sup>2</sup> Streamlining Electric Power Regulation, 57 FR 23171 (June 2, 1992), IV FERC Stats. & Regs. ¶ 32,484 (1992).

<sup>3</sup> Section 33.3 is revised to provide for the filing of Exhibit A (formerly Exhibit C). Through an oversight, the NOPR did not include this revision.

<sup>4</sup> 16 U.S.C. 824b.



quarterly updates of their finances, construction plans, and regulatory activities. APPA requests that this reporting requirement be retained, again for two reasons. First, according to APPA, quarterly updates are essential in those situations when a filing is made just after the annual reporting deadline and the case is resolved in the space of less than a year. Second, APPA maintains, future rate change applicants may be financially unstable, and a refund amount may be significant enough that the Commission and the parties likely to receive any refund need to keep quarterly "tabs" on applicants' financial stability (and ability to pay).

The Commission declines to retain § 35.13(d)(6). The Commission disagrees with APPA that quarterly updates are needed in situations when a filing is made just after the annual reporting deadline and the case is resolved in less than a year. The Commission requires applicants for rate schedule changes, with limited exceptions, to file with their applications Period I and/or Period II cost-of-service data.<sup>5</sup> Further, section 205(e) of the Federal Power Act states that public utilities proposing a rate schedule change have the burden of proving that the proposed rate is just and reasonable.<sup>6</sup> In so doing, they must be able to demonstrate the reasonableness of their Period I and/or Period II data. In view of these requirements, the Commission already has sufficient data, and does not need quarterly updates, to evaluate applications for rate changes. Finally, the Commission will not retain this section merely on the basis of speculation that a future rate change applicant may not be in a financial condition to pay refunds, and so that the Commission would need to keep "tabs" on that applicant.<sup>7</sup>

**Sections 35.19a(b)(2) and (3).** Section 35.19a(b)(2) currently requires public utilities collecting increased rates or charges subject to refund to file annually, for each billing period: (a) The monthly billing determinants; (b) the

revenues that would result under the previously effective rates; (c) the revenues that would result under the suspended rates; and (d) the difference between the latter two. Section 35.19a(b)(3) currently gives the Director of the Office of Electric Power Regulations authority to require individual public utilities to make such filings on a more frequent basis when deemed appropriate or necessary, or upon request where good cause is shown. APPA supports deleting these rules, but requests that the Commission state that in eliminating the rules it is not in any way suggesting that the utility is not required to maintain the information in sufficient detail and to file it if requested either by this Commission or by a customer in the event a refund is ordered.

In the NOPR, the Commission preliminarily found that there was no reason for public utilities to have to routinely submit the data. The Commission added that the data are used to calculate refunds and that if, after the Commission approves a new rate, a dispute arises over the amount of refunds, the Commission can require the utility to submit the data at that time. These sections go to submission of data to the Commission, and not to whether the data are to be maintained. Consequently, the Commission agrees with APPA that eliminating these sections and effectively retaining § 35.19a(b)(1) (which requires keeping account of rate and refund information) does not eliminate the requirement that the data be maintained, and does not eliminate the Commission's authority to require the submission of data in a particular instance. Accordingly, the proposed revisions will be adopted.

**Part 290.** Part 290 currently requires an electric utility periodically to gather cost-of-service information in accordance with Section 133 of PURPA if the utility's total sales of electric energy for purposes other than resale exceed 500 million kWh during the immediately preceding calendar year.<sup>8</sup> This retail rate information includes accounting cost data, marginal cost data, and load data (both at the system-wide level and the customer group level). The collection of such

information was designed to serve the needs of state regulatory authorities, unregulated electric utilities and the public in considering the rate standards and policies of PURPA in retail ratemaking, including the declining block rate design objective of section 111(d)(2) of PURPA, 16 U.S.C. 2621(d)(2), and the categorization of such costs into demand, energy, and customer components. Under section 133(c) of PURPA, 16 U.S.C. 2643(c), this information is to be submitted biennially on or before June 30 of even numbered years to the Commission and the state regulatory authority, if any, that has retail ratemaking jurisdiction for the electric utility. Section 290.102 of the Commission's regulations requires that the utility retain copies of this information for five years from the date it is filed with the Commission, make copies of such information available for public inspection at the principal offices of the utility, and provide copies to the public at the cost of reproduction.

Section 133(b) of PURPA, 16 U.S.C. 2643(b), provides for periodic review of the Commission's regulations implementing section 133. Since all but several electric utilities previously have been exempted from compliance with part 290,<sup>9</sup> the Commission proposed to revise part 290 to: (a) No longer require the remaining nonexempt electric utilities to file the cost of service information with the Commission; but (b) to continue to require the submittal of this information to the state regulatory authority which has retail ratemaking jurisdiction over the nonexempt electric utility. In the case of a nonexempt, nonregulated utility, the Commission proposed to continue to make such information available to the public. The Commission further proposed to delete §§ 290.103 through 290.701 as unnecessary.<sup>10</sup>

<sup>9</sup> See 18 CFR 290.101(b) and part 290, appendix A. The seven nonexempt electric utilities are: Jersey Central and Atlantic City Electric, located in New Jersey; the Department of Water and Power of the City of Los Angeles, California; Pacific Gas & Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company located in California; and the Western Area Power Administration (WAPA).

<sup>10</sup> Sections 290.103 through 290.105 concern filing deadlines, reporting periods, treatment of compliance costs, and definitions. Sections 290.201 through 290.205 concern accounting cost information requirements. Sections 290.301 through 290.308 concern marginal cost information requirements. Sections 290.401 through 290.406 concern load data requirements. Sections 290.501 through 290.502 concern system and customer class cost calculation requirements. Sections 290.601 through 290.603 concern filing exemptions and extensions. Section 290.701 concerns enforcement.

<sup>5</sup> Period I means the most recent 12 consecutive calendar months, or the most recent calendar year, for which actual data are available, the last day of which is no more than 15 months before the date of tender for filing of a rate schedule change. Period II means any period of 12 consecutive months after the end of Period I that begins: (a) No earlier than 9 months before the date on which the rate schedule change is proposed to become effective; and (b) no later than 3 months after the date on which the rate schedule change is proposed to become effective. 18 CFR 35.13(d)(3).

<sup>6</sup> 16 U.S.C. 824(d).

<sup>7</sup> If such situation arises, the Commission can address it on a case-by-case basis, by imposing additional reporting requirements in its hearing order, or supplemental orders in the proceeding. 16 U.S.C. 825(h).

<sup>8</sup> 18 CFR 290.101(a); but see 18 CFR 290.101(b)(1992). These regulations were promulgated in Public Utility Regulatory Policies Act: Collection and Reporting of Information Concerning Cost of Providing Retail Electric Service, Order No. 353, 48 FR 55438 (Dec. 13, 1983), FERC Stats. & Regs. Regulations Preambles 1982-1985 ¶ 30.526 (1983), *reconsid. denied*, 49 FR 4938 (Feb. 9, 1984), FERC Stats. & Regs. Regulations Preambles 1982-85 ¶ 30.539 (1984), *clarified*, 49 FR 23609 (June 7, 1984), FERC Stats. & Regs. Regulations Preambles 1982-85 ¶ 30.573 (1984).



API opposes the Commission's proposed revisions of part 290 because, it contends, many exempt electric utilities are not required to file marginal cost data with their state regulatory authorities, or file in on a regular basis or in a form that is readily available. According to API, many of whose members own or operate electric generation facilities that are qualifying facilities (QFS), QF's have an interest in the marginal cost data now required to be filed because marginal cost data can greatly assist QFs in their planning decisions. API contends that when marginal cost data are required to be filed with a state regulatory authority, the data are often contained in long range system plans or lengthy filings, and that the data are, therefore, difficult to obtain. API further claims that the remedy available to a party which is unable to obtain information from a state regulatory authority or an exempt electric utility would be eliminated with the removal of § 290.603 (petitions for withdrawal of extensions and exemptions) and § 290.701 (enforcement provisions).

API also contends that if the Commission removes those sections of part 290 specifying the data to be gathered by electric utilities, the utilities would no longer be required to file any cost of service information with the Commission or state regulatory authorities beyond what is expressly provided in section 133 of PURPA—and thus would not have to file marginal cost data, because section 133(a) of PURPA does not require the filing of marginal cost data.<sup>11</sup> API asserts that the Commission cannot adopt its proposed revisions to part 290, unless the Commission makes a specific finding that the only data necessary to allow determination of the costs associated

with providing electric service are the data listed in section 133 of PURPA.

API suggests that if the Commission wants to be officially "out of the business" of collecting part 290 data, a different revision could accommodate that change without changing the substance of what must be filed or undermining the enforcement provisions of the statute and the current rules. API suggests the following: (1) Require all electric utilities subject to state regulation to provide part 290 data to their respective state regulatory authorities; (2) require all other electric utilities to make these data publicly available; and (3) require all electric utilities to file an affidavit with the Commission certifying that the requisite state filing was made or that the data were made publicly available.

Atlantic City Electric and Jersey Central agree with the proposed revisions to part 290. They also seek exemption from the requirements of part 290, and are supported by the State of New Jersey Board of Public Utilities.<sup>12</sup>

WAPA is a nonexempt, nonregulated electric utility. Because it does not routinely collect cost of service data, WAPA requests that the proposed revision to § 290.102 be amended to state that all nonexempt, nonpublic utilities shall make these data publicly available only to the extent they are collected and compiled.

#### Discussion

The Commission hereby grants Atlantic City Electric's and Jersey Central's requests for exemption from the requirements of part 290. As a result of this action, the only nonexempt utilities are four California utilities and WAPA.<sup>13</sup>

The Commission will modify the proposed § 290.102 to incorporate the change requested by WAPA. WAPA's obligations under Title I of PURPA, 16 U.S.C. 2611, *et seq.*, which for present purposes goes to retail ratemaking, are minimal because WAPA is primarily a wholesale supplier.<sup>14</sup>

An examination of the legislative history of section 133 shows that Congress intended to require electric utilities to gather information (under rules prescribed by the Commission) which is necessary to determine the costs associated with providing electric service and to provide for the filing and publication of this information.<sup>15</sup> However, as noted above, section 133(b) of PURPA gives the Commission express authority to review and revise its rules implementing section 133. In Order No. 353, adopting part 290, the Commission explained:

Although the purpose of section 133 is not express, the statutory scheme and the legislative history indicate that the Congress desired to make information available that previously had not been readily accessible to assist in reassessing public utility ratemaking standards. If section 133 information is neither used nor considered necessary, the basis would exist for the Commission to find that gathering and reporting are not likely to carry out the purposes of section 133.<sup>16</sup> The Commission further stated that its "responsibility is to ensure that its regulations implementing the section 133 reporting requirements provide to the states and the public only that information that is useful and necessary. By exempting utilities from gathering and reporting information that the Commission finds is not likely to carry out the purposes of section 133, an unjustified and unintended regulatory burden is relieved \* \* \*."<sup>17</sup>

In keeping with the Commission's objective in this proceeding of deleting regulations which are obsolete or which require information the Commission no longer needs or is readily available from other sources, the Commission finds that the purposes of section 133 would not be

<sup>11</sup> Section 133(a) of PURPA provides that the Commission's rules include requirements for the gathering of the following information with respect to each electric utility:

(1) The costs of serving each electric consumer class, including costs of serving different consumption patterns within such class, based on voltage level, time of use, and other appropriate factors;

(2) Daily kilowatt demand load curves for all electric consumer classes combined representative of daily and seasonal differences in demand, and daily kilowatt demand load curves for each electric consumer class for which there is a separate rate, representative of daily and seasonal differences in demand;

(3) Annual capital, operating, and maintenance costs—

(A) For transmission and distribution services, and

(B) For each type of generating unit; and

(4) Costs of purchased power, including representative daily and seasonal differences in the amount of such costs.

<sup>12</sup> Atlantic City Electric includes with its comments a letter, dated March 14, 1991, from the Secretary, State of New Jersey Board of Public Utilities (Board), supporting both Atlantic City Electric's and Jersey Central's request for exemption from the requirements of part 290. The Board states that, during the course of rate cases and competitive bidding filings before it and in response to the Board's reporting requirements, Atlantic City Electric and Jersey Central have supplied information which not only duplicates information required by part 290, but also satisfies the public's need for information. The Board further notes that Atlantic City Electric and Jersey Central have each agreed to prepare, biennially, a document which will be on file at their respective offices, and which will cross-reference the data requirements of part 290 with other available data. The Board states that this document will be readily accessible to the public during standard business hours. The Board submits that such exemptions are entirely consistent with its state regulatory requirements and are consistent with the public interest.

<sup>13</sup> See *supra*, note 9.

<sup>14</sup> In various prior applications for exemption from the reporting requirements of part 290, WAPA stated that it sought exemption because it was responsible for marketing only such electric power as was available to it, and that it did not have any responsibility as a traditional utility. These exemptions were granted in Docket Nos. RE80-31-006, 55 FERC ¶ 62,016 (1991); RE80-31-005, 45 FERC ¶ 62,117 (1988); RE81-6-000, 17 FERC ¶ 62,552 (1981); and RE80-31, 12 FERC ¶ 62,224 (1980). See also U.S. Army Corps of Engineers, 47 FERC ¶ 61,013 at 61,009-11 (1989).

<sup>15</sup> H.R. Rep. No. 1750, 95th Cong., 2d Sess. 86 (1978), reprinted in 1978 U.S.C.A.N. 7797, 7820.

<sup>16</sup> FERC Stats. & Regs. Regulations Preambles 1982-85 at 30,813.

<sup>17</sup> *Id.* at 30,816.



served by continuing to retain the existing reporting requirements in part 290. As observed, these requirements now apply essentially only to four California utilities. The State of California will continue to receive the required data under the Commission's proposal. With the exception of the API comments, the comments that were received basically favored the proposed change. In these circumstances, the Commission sees no reason to continue the burden of once far-reaching regulations that now have fallen into general disuse.

API contends that its interest in this proceeding is to assure QFs continued access to marginal cost data to assist their planning decisions. However, part 290 was not intended to assist QFs with their planning. Instead, the objective of gathering the data required by part 290 was, as noted above, to satisfy the retail ratemaking standards of title I of PURPA, and the need for such data has passed.<sup>18</sup> As the Commission observed in 1983 in Order No. 353 in deciding to exempt a number of utilities from the requirements of part 290:

(S)uch data are apparently no longer needed for completion of the Title I mandate by state regulatory authorities and governing authorities of nonregulated utilities, including those that have substantially completed their obligation to consider the standards and policies under Title I of PURPA. \* \* \* Most states and unregulated utilities have substantially completed their obligations under Title I of PURPA. Moreover, the statutory period for consideration and determinations under sections 111 and 113 of PURPA is passed.<sup>(19)</sup>

<sup>18</sup> Section 111 of PURPA, 16 U.S.C. 2621, contains six ratemaking standards that state regulatory authorities and nonregulated electric utilities were required to consider and implement, if appropriate. The six standards provide, as follows: (1) Rates should reflect the cost of providing service; (2) the energy component of rate charges should not decline with the increased usage, unless costs correspondingly decline; (3) rates should vary with the time-of-usage if cost-effective; (4) rates may vary by season; (5) interruptible rates reflecting the cost of interruptible service should be offered; and (6) load management programs that are, *inter alia*, cost-effective should be offered. Consideration of these standards was required by November 1981, or at the first retail rate proceeding thereafter.

Section 113 of PURPA, 16 U.S.C. 2623, contains five policies that state regulatory authorities and nonregulated electric utilities were to adopt if appropriate. These policies cover master metering, automatic adjustment clauses, information to consumers, procedures for termination of electric service, and advertising. Adoption, or a determination that adoption was not appropriate, was required by November 1980.

<sup>19</sup> FERC Stats. & Regs. Regulations Preambles 1982-85 at 30,817 (footnotes omitted). The Commission, in Order No. 353, did not discontinue the part 290 requirements at that time because six states claimed to use and expressed a desire to

Moreover, the Commission notes that it has made available information through other regulations to assist QFs with their planning decisions. Section 292.302, which provides for the availability of electric utility system cost data, requires electric utilities to provide state regulatory authorities and the public with avoided cost information which is intended to assist QFs in their planning. Such data include ten-year plans for capacity additions and retirements.<sup>20</sup>

Further, the State of California may, if it so chooses, continue to require the four California utilities to provide marginal cost data. As the Commission stated in Order No. 353, it is "fair to presume that state regulatory authorities have the authority to require utilities to file marginal cost information, if they consider it essential to their ratemaking practices."<sup>21</sup> Nothing in this final rule revising part 290 to eliminate at the federal level residual information obligations pertaining to the few remaining nonexempt electric utilities should be construed as impacting on any state filing requirements.

The Commission will, however, modify the proposed § 290.102 to incorporate API's proposal that the remaining nonexempt electric utilities be required to file an affidavit with the Commission certifying that the requisite state filing was made or that the data were made publicly available. Further, because section 133(c) requires the Commission to prescribe rules governing the timing of filings,<sup>22</sup> the Commission has decided to retain (with modifications) the filing requirements of § 290.103. The Commission will, however, remove §§ 290.104 (costs of compliance) and 290.105 (definitions). These sections are no longer necessary in view of the Commission's

continue to receive the information. In those cases, the Commission deferred to the judgment of the state regulatory authorities, at least with respect to total exemptions of larger utilities, subject to later review of the uses made of the section 133 data. *Id.* at 30,818-19 & 30,828 n.20. None of those states (Alabama, California, Minnesota, Ohio, Pennsylvania, and Virginia) submitted comments in the instant proceeding.

<sup>20</sup> 18 CFR 292.302.

<sup>21</sup> FERC Stats. & Regs. Regulations Preambles 1982-85 at 30,822. The Commission further observed that many states have established marginal cost requirements including some that predate the implementation of PURPA. *Id.*

<sup>22</sup> Section 133(c) of PURPA provides as follows:

Not later than two years after the date of enactment of this Act, and periodically, but not less frequently than every two years thereafter, each electric utility shall file with—

(1) The Commission, and

modifications to the part 290 reporting requirements.<sup>23</sup>

Regarding API's proposal to retain the exemption and enforcement provisions of §§ 290.601-603, the Commission, in Order No. 353, observed that the exemption provisions were designed to accommodate the special circumstances of a utility, and that they were "more suited to resolving issues unique to individual utilities, such as a request for exemption from a particular reporting provision, than to the broader concerns addressed in this rulemaking."<sup>24</sup> Since part 290 basically would now apply only to four California utilities, there is no reason to retain this section. The State of California can institute its own exemption procedures for those utilities. Since the enforcement provisions of section 701 merely reflect what is already provided in section 133(d) of PURPA, 16 U.S.C. 2643(d), there is no reason to retain those provisions.<sup>25</sup>

Finally, since all but the four California utilities and WAPA have been exempted from the requirements of part 290, the Commission sees no

(2) Any State regulatory authority which has ratemaking authority for such utility the information gathered pursuant to this section and make such information available to the public in such form and manner as the Commission shall prescribe. In addition, at the time of application for, or proposal of, any rate increase, each electric utility shall make such information available to the public in such form and manner as the Commission shall prescribe. The two-year period after the date of enactment specified in this subsection may be extended by the Commission for a reasonable additional period in the case of any electric utility for good cause shown. (Emphasis added)

<sup>23</sup> The definitions in § 290.105, of "retail regulatory jurisdiction," "predominant retail regulatory jurisdiction," "voltage level," "typical day costs and loads," and "specified reported months," pertain to terms used in sections 201 through 701 of part 290, which are being removed.

The term "state regulatory authority" is defined in section 133(c)(2) of PURPA as a state agency having ratemaking authority for an electric utility. Consequently, elimination of the definition of this term from the regulations will have no adverse impact. While the two definitions are not identical, the differences are sufficiently minor that there is no good reason to retain the regulation simply to retain the regulation's definition.

<sup>24</sup> FERC Stats. & Regs. Regulations Preambles 1982-85 at 30,814.

<sup>25</sup> Section 133(d) of PURPA provides as follows:

For purposes of enforcement, any violation of a requirement of this section shall be treated as a violation of a provision of the Energy Supply and Environmental Coordination Act of 1974 enforceable under section 12 of such Act (notwithstanding any expiration date in such Act) except that in applying the provisions of such section 12 any reference to the Federal Energy Administrator shall be treated as a reference to the Commission.

Section 12 of the Energy Supply and Environmental Coordination Act of 1974, 15 U.S.C. 797, in turn, provides for civil penalties and civil actions by the Attorney General and private parties



purpose in continuing to list exempt utilities in appendix A of part 290. Accordingly, the Commission will revise appendix A to list only the nonexempt utilities.

#### IV. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.<sup>26</sup> The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.<sup>27</sup> No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective, or procedural or that does not substantially change the effect of legislation or regulations being amended.<sup>28</sup> This final rule is procedural in nature. It merely makes clerical changes and deletes reporting requirements and regulations that the Commission has decided are no longer necessary. Accordingly, the Commission finds that no environmental consideration is necessary.

#### V. Regulatory Flexibility Act

The Regulatory Flexibility Act<sup>29</sup> requires rulemakings to either contain a description and analysis of the impact the rule will have on small entities or to certify that the rule will not have a substantial economic impact on a substantial number of small entities. The final rule removes unnecessary and obsolete regulations; it does not establish any new reporting requirements. Further, the data that the Commission are deleting are either no longer necessary or could, if necessary, still be obtained from other existing sources. Consequently, the Commission certifies that this proposed rule will not have "a significant economic impact on a substantial number of small entities."

#### VI. Information Collection Statement

The Office of Management and Budget's (OMB) regulations<sup>30</sup> require that OMB approve certain information and recordkeeping requirements imposed by an agency. The information collection requirements in this proposed rule are contained in FERC-516, "Electric Rate Filings," (1902-0096), FERC-519, "Corporate Applications," (1902-0082) and FERC-557, "PURPA Section 133: Cost of Retail Electric

Service Information," (1902-0042).

The Commission used the data collected in these information requirements to carry out its regulatory responsibilities pursuant to the FPA, PURPA, the Pacific Northwest Electric Power Planning and Conservation Act, and delegations to the Commission from the Secretary of Energy. The Commission's Office of Electric Power Regulation used the data for review of: Electric rate filings; and filings submitted by the electric industry for sale, lease or other disposition, mergers or consolidations, or to purchase or acquire securities of a public utility. The Commission is deleting reporting requirements and regulations that the Commission no longer considers necessary.

The Commission is notifying OMB that these collections of information are no longer required.

#### VII. Effective Date

This final rule is effective December 16, 1992.

#### List of Subjects

##### 18 CFR Part 33

Electric utilities, Reporting and recordkeeping requirements, Securities.

##### 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

##### 18 CFR Part 290

Electric utilities, Penalties, Reporting and recordkeeping requirements, Uniform System of Accounts.

In consideration of the foregoing, the Commission amends parts 33, 35 and 290, chapter I, title 18, Code of Federal Regulations, as set forth below.

By the Commission.  
Linwood A. Watson, Jr.,  
*Acting Secretary.*

#### PART 33—APPLICATION FOR SALE, LEASE, OR OTHER DISPOSITION, MERGER OR CONSOLIDATION OF FACILITIES, OR FOR PURCHASE OR ACQUISITION OF SECURITIES OF A PUBLIC UTILITY

1. The authority citation for Part 33 is revised to read as follows:

**Authority:** 16 U.S.C. 791a-825r, 2601-2645; 31 U.S.C. 9701; 42 U.S.C. 7101-7352.

2. In § 33.2 paragraphs (b), (d), (g), (h), (i) and (n) are removed; paragraph (c) is redesignated as paragraph (b); paragraphs (e), (f) and (j) are redesignated as paragraphs (c), (d) and (e); paragraphs (k), (l) and (m) are redesignated as paragraphs (f), (g) and (h); paragraphs (o), (p), (q) and (r) are redesignated as paragraphs (i), (j), (k)

and (l); and newly redesignated paragraph (c) is revised to read as follows:

#### § 33.2 Contents of application; filing fee.

\* \* \* \* \*

(c) Designation of the territories served, by counties and States.

\* \* \* \* \*

3. In § 33.3 exhibits A, B, D and E are removed in their entirety; exhibit C is redesignated as exhibit A; exhibits F through M are redesignated as exhibits B through I, respectively; the final "Note" paragraph is removed; and the introductory text is revised to read as follows:

#### § 33.3 Required exhibits.

There shall be filed with the application as part thereof one certified copy and five uncertified copies of exhibit A and one certified copy and five uncertified copies plus one for each State affected of exhibits B, C, D, E, F, G, H and I, described as follows:

\* \* \* \* \*

#### PART 35—FILING OF RATE SCHEDULES

The authority citation for part 35 continues to read as follows:

**Authority:** 16 U.S.C. 791a-825r, 2601-2645; 31 U.S.C. 9701; 42 U.S.C. 7101-7352.

5. In § 35.13, paragraph (d)(6) is removed; paragraph (d)(7) is redesignated as paragraph (d)(6); paragraph (h)(7)(iv) is removed; and paragraphs (h)(7)(v) and (h)(7)(vi) are redesignated as paragraphs (h)(7)(iv) and (h)(7)(v).

6. In § 35.19a, paragraph (b) is revised to read as follows:

#### § 35.19a Refund requirements under suspension orders.

\* \* \* \* \*

(b) *Reports.* Any public utility whose proposed increased rates or charges were suspended and have gone into effect pending final order of the Commission pursuant to section 205(e) of the Federal Power Act shall keep accurate account of all amounts received under the increased rates or charges which became effective after the suspension period, for each billing period, specifying by whom and in whose behalf such amounts are paid.

#### § 35.22 [Removed]

7. Section 35.22 is removed.

#### § 35.23 through 35.26 Redesignated as § 35.22 through 35.25.

8. Sections 35.23 through 35.26 are redesignated as §§ 35.22 through 35.25.

<sup>26</sup> Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Regulations Preambles 1986-90 ¶ 30,783 (1987).

<sup>27</sup> 18 CFR 380.4 (1992).

<sup>28</sup> 18 CFR 380.4 (a)(2)(ii).

<sup>29</sup> 5 U.S.C. 601-12.

<sup>30</sup> 5 CFR 1320.12.



**PART 290—COLLECTION OF COST OF SERVICE INFORMATION UNDER SECTION 133 OF THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978**

9. The authority citation for part 290 is revised to read as follows:

Authority: 16 U.S.C. 791a-828c, 2601-2645; 42 U.S.C. 7101-7352.

10. Section 290.102 is revised to read as follows:

**§ 290.102 Information gathering and filing.**

All nonexempt electric utilities must file the data required by section 133(a) of the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. § 2643, with their state regulatory authorities. All nonexempt, nonregulated electric utilities shall, to the extent the data are collected and compiled, make these data publicly available. All nonexempt electric utilities shall file an affidavit with the Commission certifying that the requisite state filing was made. All nonexempt, nonregulated electric utilities shall file an affidavit with the Commission certifying that the data were made publicly available.

11. In § 290.103, the introductory text and paragraphs (a), (b) and (c)(1) are revised; paragraph (c)(2) is removed; and paragraph (c)(3) is redesignated as (c)(2) and revised to read as follows:

**§ 290.103 Time of filing and reporting period.**

All nonexempt electric utilities must file with any state regulatory authority having ratemaking authority for such utilities the information gathered pursuant to § 290.102, and all nonexempt, nonregulated electric utilities must make such information available to the public as follows:

(a) *Biennial filing.* Information required to be filed under § 290.102 must be filed biennially in even-numbered years on or before June 30 of that year.

(b) *Reporting period.* The reporting period is the calendar year immediately preceding the filing year. Information for previous years and projected information for future years must be reported on a calendar year basis.

(c) *Alternate reporting period.* Use of an alternate reporting period is permitted as follows:

(1) Except as provided in paragraph (c)(2) of this section, if a nonexempt electric utility has gathered all of the information specified in § 290.102 and has filed such information, based on a recent 12-month reporting period, either with its state regulatory authority or governing authority in connection with a retail rate proceeding, the nonexempt electric utility may substitute such information for the equivalent

information required by this part in fulfillment of the biennial filing requirements.

(2) If a nonexempt electric utility not subject to the jurisdiction of a state regulatory authority maintains accounting records other than on a calendar year basis, such utility may use such other basis as the reporting period for purposes of compliance with this part, provided such reporting period is a 12-month period.

**§ 290.104 through 290.701 [Removed]**

12. Sections 290.104 through 290.701 are removed.

13. Part 290, appendix A, is revised to read as follows:

**Appendix A—Nonexempt Electric Utilities**

Electric utilities that are not exempt from part 290, as of the date of publication of the Commission's Order No. 545 are as follows:

Department of Water and Power of the City of Los Angeles, California.  
Pacific Gas & Electric Co.  
San Diego Gas and Electric Co.  
Southern California Edison Co.  
Western Area Power Administration.

[FR Doc. 92-27424 Filed 11-13-92; 8:45 am]  
BILLING CODE 6717-01-M

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 902**

**Alaska Abandoned Mine Land Reclamation Program**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** OSM is announcing the approval of a proposed amendment to the Alaska Abandoned Mine Land Reclamation Program (the Alaska AMLR program), as administered by the Alaska Department of Natural Resources, Division of Mining (DNR), under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment implements a State-administered Abandoned Mine Land Emergency Program in accordance with section 410 of SMCRA.

**EFFECTIVE DATE:** November 16, 1992.

**FOR FURTHER INFORMATION CONTACT:** Guy Padgett, (307) 261-5776.

**SUPPLEMENTARY INFORMATION:**

**I. Background on the Alaska AMLR Plan**

On December 23, 1983, the Secretary of the Interior approved the Alaska AMLR plan. General background information on the Alaska AMLR plan, including the Secretary's findings and the disposition of comments, can be found in the December 23, 1983, *Federal Register* (48 FR 56752).

**II. Submission of Amendment**

By letter dated May 28, 1992 (Administrative Record No. AK-D-1), Alaska submitted a proposed amendment to its AMLR program which would allow Alaska to assume responsibility for an emergency response reclamation program in the state. The amendment describes the specific procedures which Alaska will follow to investigate, reclaim, and document emergency reclamation activities in the state. The amendment also describes the realty and environmental compliance activities that will support this function of the Alaska AMLR program.

OSM published a notice in the July 30, 1992, *Federal Register* (57 FR 33664) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (Administrative Record No. AK-D-9). The public comment period ended August 31, 1992. The public hearing scheduled for August 24, 1992, was not held because no one requested an opportunity to testify.

**III. Director's Findings**

The Director finds, in accordance with section 405 of SMCRA, that the proposed amendment to the Alaska AMLR program submitted on May 28, 1992, is consistent with SMCRA and the Alaska AMLR program. Further, the Director has determined, pursuant to 30 CFR 884.14, that:

1. The public has been given adequate notice and opportunity to comment, and the record does not reflect any unresolved controversies.

2. Views of other Federal agencies have been solicited and considered.

3. Alaska has the legal authority, and policies and administrative structures, necessary to implement the emergency response reclamation program in the state.

4. The program amendment meets all requirements of OSM's AMLR program provisions.

5. Alaska has a Surface Mining Regulatory Program approved in accordance with section 503 of SMCRA.

6. The program amendment is in compliance with all applicable State and Federal laws and regulations.



#### IV. Summary and Disposition of Comments

##### 1. Public Comments

In accordance with 30 CFR 884.15(a), OSM solicited public comments and provided opportunity for a public hearing on the proposed program amendment in the July 30, 1992, *Federal Register* (57 FR 33664). No public comments were received by the close of the comment period on August 31, 1992. Because no one requested an opportunity to testify at the offered public hearing, no hearing was held.

##### 2. Agency Comments

Pursuant to 30 CFR 884.15(a) and 884.14(a)(2), OSM solicited comments from other Federal agencies with an actual or potential interest in the Alaska AMLR program.

By letter dated July 7, 1992, the National Marine Fisheries Service, Alaska Region, of the U.S. Department of Commerce replied that it has no specific comments on the amendment, but that it would work with DNR on individual emergency projects (Administrative Record No. AK-D-4).

By letter dated July 2, 1992, the U.S. Army Corps of Engineers, Alaska District, replied that it had no objection to the amendment (Administrative Record No. AK-D-5).

By letter dated July 2, 1992, the U.S. Fish & Wildlife Service, Alaska Region, replied that it had no objection to the amendment (Administrative Record No. AK-D-6).

By letter dated July 9, 1992, the USDA Soil Conservation Service, Alaska office, replied that it has a very good working relationship with DNR and that the amendment met its approval (Administrative Record No. AK-D-7).

By letter dated July 24, 1992, the National Park Service, Alaska Region (NPS), responded. The response noted that there were few potential emergency sites on national park lands, and that it had the staff and capability to address any emergencies that might occur on national park lands. The response expressed a concern that emergencies might occur on private, native, or state-owned inholdings within national park units, and that DNR response to emergencies on these lands would require access approval from NPS.

OSM's Casper Field Office subsequently contacted NPS and explained the Federal and State requirements for obtaining access. Applicable to this question is Alaska's rule at 11 Alaska Administrative Code 90.832(b), which requires DNR to make "reasonable efforts \* \* \* to obtain written consent" for entry. OSM

believes that with communication lines between NPS and DNR already existing, written consents for entry can be obtained.

#### V. Director's Decision

The Director finds that the proposed Alaska amendment is in accordance with section 405 and 410 of SMCRA and the Federal regulations at 30 CFR 884.15, and is approving the amendment. The Federal regulations at 30 CFR part 902 codifying decisions concerning the Alaska AMLR program are being amended to implement this decision.

The Director is also taking this opportunity to revise 30 CFR 902.20 to reflect current addresses where the Alaska AMLR program is available for public review, to make explicit the effective date of the approval, and to correct an editorial error in the title of the section.

#### VI. Procedural Determinations

##### *Executive Order 12291*

On March 30, 1992, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or disapproval of State and Tribal abandoned mine land reclamation plans and revisions thereof. Accordingly, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

##### *Executive Order 12778*

The Department of the Interior has conducted the reviews required by section 2 of E.O. 12778 (56 FR 55195; October 25, 1991) on Civil Justice Reform, and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions thereof since each such plan is drafted and adopted by a specific State or Tribe, not by OSM. Decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof are to be based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231-43) and the Federal regulations at 30 CFR part 884.

##### *National Environmental Policy Act*

No environmental impact statement is required for this rule since agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with NEPA (42 U.S.C. 4332) by the Manual of the

Department of the Interior [516 DM 6, appendix 8, paragraph 8.4B(29)].

##### *Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under 44 U.S.C. 3507 *et seq.*

##### *Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon Federal regulations for which an economic analysis was prepared and certification was made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analysis for the corresponding Federal regulations.

#### List of Subjects in 30 CFR Part 902

Abandoned mine land reclamation, Intergovernmental relations, Surface mining, Underground mining.

Dated: September 18, 1992.

W. Hord Tipton,

Deputy Director, Operations & Technical Services.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T, of the Code of Federal Regulations is amended as set forth below.

#### PART 902—ALASKA

1. The authority citation for part 902 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 902.20 is revised to read as follows:

##### **§ 902.20 Approval of Alaska Abandoned Mine Land Reclamation Plan.**

The Alaska Reclamation Plan, as submitted on August 17, 1983, is approved effective December 23, 1983. Copies of the approved program are available at:

(a) Alaska Department of Natural Resources, Division of Mining; P.O. Box 10716; Anchorage AK 99510-2163.

(b) Office of Surface Mining, Casper Field Office; 100 East "B" St., room 218; Casper WY 82601-1918.



3. A new § 902.25 is added to read as follows:

**§ 902.25 Approval of amendments to the Alaska Abandoned Mine Land Reclamation Plan.**

(a) The amendment to allow Alaska to assume responsibility for an emergency response reclamation program, as submitted May 28, 1992, is approved effective November 16, 1992.

(b) Reserved.

[FR Doc. 92-27722 Filed 11-13-92; 8:45 am]  
BILLING CODE 4310-05-M

### 30 CFR Part 920

#### Maryland Regulatory Program; Definition

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** OSM is announcing the approval of a proposed amendment to the Maryland regulatory program (hereinafter referred to as the Maryland program) approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment revises the definition of the term "operator." The amendment is intended to make the Maryland program no less effective than the Federal regulations.

**EFFECTIVE DATE:** November 16, 1992.

**FOR FURTHER INFORMATION CONTACT:** Robert Biggi, Director, Harrisburg Field Office, Harrisburg Transportation Center, 4th and Market Streets, suite 3C, Harrisburg, PA 17101; Telephone: (717) 782-4036.

#### SUPPLEMENTARY INFORMATION:

- I. Background on the Maryland Program.
- II. Submission of Amendments.
- III. Director's Findings.
- IV. Summary and Disposition of Comments.
- V. Director's Decision.
- VI. Procedural Determinations.

#### I. Background on the Maryland Program

On February 18, 1982, the Secretary of the Interior approved the Maryland program. Information regarding the general background on the Maryland program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Maryland program can be found in the February 18, 1982, *Federal Register* (47 FR 7214). Actions taken subsequent to the approval of the Maryland program are identified at 30 CFR 920.12, 30 CFR 920.15, and 30 CFR 920.16

#### II. Submission of Amendments

By letter dated June 11, 1992, the Maryland Bureau of Mines (Maryland) submitted a program amendment to OSM (Administrative Record No. MD-554.00). The proposed amendment, Senate Bill Number 114, revises the definition of the term "operator" in sections 7-101(k), 7-501(o), and 7-5A-02(h) in the Natural Resources Article, Annotated Code of Maryland. As revised, "operator" means any person, partnership or corporation who removes or intends to remove more than 250 tons of coal from the earth by surface coal mining or deep coal mining within 12 consecutive calendar months in any one location.

OSM announced receipt of the proposed amendment in the August 18, 1992 *Federal Register* (57 FR 37134) and in the same notice opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on September 17, 1992.

#### III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.17, are the Director's findings concerning the proposed amendment submitted on June 11, 1992. Any revisions not specifically addressed below are found to be no less stringent than SMCRA and no less effective than the Federal regulations.

#### REVISIONS TO MARYLAND'S REGULATIONS THAT ARE SUBSTANTIVELY IDENTICAL TO THE CORRESPONDING FEDERAL REGULATIONS

State regulation	Subject	Federal counterpart
Annotated Code of Maryland 7-1-1(k), 7-501(o), 7-5A-01(h).	Definitions .....	701(13) SMCRA.

Because the above proposed revisions are identical in meaning to the corresponding Federal regulation, the Director finds that Maryland's proposed rule is no less effective than the Federal rule.

#### IV. Summary and Disposition of Comments

##### Public Comments

The public comment period announced in the August 18, 1992 *Federal Register* (57 FR 37134) ended on September 17, 1992. No public comments

were received and a public hearing was not held as no one requested an opportunity to provide testimony.

##### Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Maryland program. No comments were received.

#### V. Director's Decision

Based on the above findings, the Director is approving the program amendment submitted by Maryland on June 11, 1992.

The Federal regulations at 30 CFR part 920 codifying decisions concerning the Maryland program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage states to bring their programs in conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

##### EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency with respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no such provisions.

#### VI. Procedural Determinations

##### Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

##### Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these



standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.13 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

#### *National Environmental Policy Act*

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1291(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(c) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

#### *Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

#### *Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

#### *List of Subjects in 30 CFR Part 920*

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 23, 1992.

Alfred E. Whitehouse,  
*Acting Assistant Director, Eastern Support Center.*

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

#### **PART 920—MARYLAND**

1. The authority citation for part 920 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 920.15 is amended by adding a new paragraph (r) to read as follows:

#### **§ 920.15 Approval of amendments to State regulatory program.**

(r) The following amendment submitted to OSM on June 11, 1992, is approved effective November 16, 1992. The amendment consists of the following modifications to the Maryland program:

(1) Revision of the following statutes of the Maryland Annotated Code:

7-101(k)—Definition

7-501(o)—Definition

7-5A-01(h)—Definition

[FR Doc. 92-27723 Filed 11-13-92; 8:45 am]

BILLING CODE 4310-05-M

#### **30 CFR Part 938**

#### **Pennsylvania Regulatory Program; Regulatory Reform**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** OSM is announcing the approval of a proposed amendment to the Pennsylvania regulatory program (hereinafter referred to as the Pennsylvania program) approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment amends Pennsylvania's coal mining regulations at 25 Pa. Code Chapters 86, 88, and 89. The proposed changes expand the definition of "coal preparation activity," amend the definition of "valid existing rights" by replacing a reference to an effective date of regulation with the actual date, and clarify that any coal preparation activity at the site of ultimate coal use under the anthracite program is not subject to the regulations.

**EFFECTIVE DATE:** November 16, 1992.

#### **FOR FURTHER INFORMATION CONTACT:**

Robert J. Biggi, Director, Harrisburg Field Office, Harrisburg Transportation Center, Third Floor, suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101; Telephone: (717) 782-4036.

#### **SUPPLEMENTARY INFORMATION:**

- I. Background on the Pennsylvania Program.
- II. Submission of Amendment.
- III. Director's Findings.
- IV. Summary and Disposition of Comments.
- V. Director's Decision.
- VI. Procedural Determinations.

#### **I. Background on the Pennsylvania Program**

The Secretary of the Interior conditionally approved the Pennsylvania program on July 31, 1982. Information on the background of the Pennsylvania program including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982, *Federal Register* (47 FR 33050). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 938.11, 938.12, 938.15 and 938.16.

#### **II. Submission of Amendment**

The Pennsylvania Department of Environmental Resources (PADER) submitted a proposed amendment (Administrative Record Number PA-720) on December 5, 1988, concerning coal preparation activities that were not previously regulated under its approved program. OSM approved the proposed amendment (54 FR 29704) on July 14, 1989.

By letter dated June 2, 1992 (Administrative Record No. PA-808), Pennsylvania submitted a proposed program amendment to make minor revisions to PADER's coal preparation regulations. The revisions expand the definition of "coal preparation activity" to include a facility associated with the coal preparation activity and impoundments and make the definition consistent in Chapters 86, 88, and 89. The amendment clarifies the effective date of subsection (iii) of the definition of "valid existing rights" in Section 86.1 (Definitions) by listing the actual calendar date when subsection 86.1(iii), concerning coal preparation activities and their associated haul roads, became effective. In addition, the amendment revises the coverage of off-site coal preparation activities under the anthracite program by exempting any activity located at the site of ultimate coal use. This revision is similar to that



approved for the bituminous program on May 31, 1991.

OSM announced receipt of the proposed amendment in the July 30, 1992, **Federal Register** (57 FR 33666) and in the same notice opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on August 31, 1992.

### III. Director's Findings

Set forth below, pursuant to SMGRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Pennsylvania program submitted on June 2, 1992. Any revisions not specifically addressed below concern nonsubstantive wording changes.

#### 1. Sections 86.1, 88.1, and 89.5

##### *Definitions—Coal Preparation Activity*

Pennsylvania proposes to expand the definition of "coal preparation activity" to include a facility associated with the coal preparation activity and impoundments. This proposed revision makes the definition consistent at sections 86.1, 88.1, and 89.5. The Director finds that the proposed definition is substantively identical to the Federal definition of coal preparation plant at 30 CFR 701.5.

#### 2. Section 86.1 *Definitions—Valid Existing Rights*

In subsection (iii), which concerns coal preparation activities and their associated haul roads, the State is proposing to delete the phrase "the effective date of this subsection" and to insert "August 25, 1989." Pennsylvania is revising subsection (iii) to show the actual calendar date that the provision approved by OSM on July 14, 1989 (54 FR 29704) became part of PADER's approved program. The notice stating that the coal preparation plant permitting rules were effective on August 25, 1989, was published in the *Pennsylvania Bulletin* on August 26, 1989. Since this amendment is proposed for the sake of clarity, the Director finds that it does not change the definition of "valid existing rights."

#### 3. Section 88.381 *General Requirements*

Pennsylvania is revising subsection (a) to require persons who intend to conduct coal preparation activities outside the permit area of a specific mine, other than the activity which is located at the site of ultimate coal use, to obtain a permit from the regulatory authority under Chapter 86 (relating to

surface and underground coal mining: General requirements for permits and permit applications).

The counterpart Federal regulations at 30 CFR 785.21 contain similar requirements that persons operating or who intend to operate a coal preparation plant outside the permit area must obtain a permit from the regulatory authority. The Federal counterpart, however, does not contain limiting language as the proposed State rule to exclude facilities "at the site of ultimate coal use." The Federal rules were revised on November 22, 1988 (53 FR 47384) by deleting the exclusionary language concerning facilities at the site of ultimate coal use and replacing that language with the requirement to obtain a permit for coal preparation plants not located within the permit area of a mine, if a facility is "operated in connection with a coal mine but outside the permit area for a specific mine." In the preamble to this revision, OSM stated that it amended this language to make it clear that the permitting requirements for off-site preparation plants apply only to off-site coal preparation that is "in connection with" a coal mine. Further, OSM stated that this limitation necessarily excludes facilities at the site of ultimate use, since such facilities are not operated "in connection with" a coal mine, and that the phrase "other than such plants which are located at the site of ultimate coal use" was redundant (53 FR 47385). In *National Wildlife Federation v. Lujan*, Nos. 88-2416, 88-3345, 88-3586, 88-3635, 89-0039, 89-0136, 89-0141 (Consolidated) (D.D.C. August 30, 1990), Judge Flannery remanded the 1988 amendment to 30 CFR 785.21 to the Secretary of the Department of the Interior (Secretary) so that he could make it clear that "proximity may not be the decisive factor" as to whether an off-site coal preparation plant is operated "in connection with" a mine. *Id.* Slip Op. at 24. The former language of 30 CFR 785.21 had exempted from permitting and other requirements only those coal preparation plants "located at the site of ultimate coal use. This former standard, promulgated in 1983 (48 FR 20401), did not explicitly employ the "in connection with" test.

Pennsylvania has chosen to mirror the 1983 version of 30 CFR 785.21 and exempt only those preparation plants "at the site of ultimate coal use" from regulation. The Pennsylvania rule, therefore, does not use the "in connection with" test, the interpretation of which led to the partial remand of 30 CFR 785.21. *Id.* at 24. Because the Secretary continues to recognize that preparation plants located "at the site of ultimate coal use" are exempt from

permitting and other requirements, the Director finds that the proposed revision to section 88.381 subsection (a) is no less effective than the Federal regulations at 30 CFR 785.21(a). In addition, this change makes the anthracite provision consistent with the bituminous counterpart (Section 89.171) approved on May 31, 1991 (56 FR 24687).

### IV. Summary and Disposition of Comments

#### *Public Comments*

The public comment period and opportunity to request a public hearing announced in the July 30, 1992, **Federal Register** (57 FR 33666) closed on August 31, 1992. No one requested an opportunity to testify at the scheduled public hearing so no hearing was held.

#### *Agency Comments*

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Pennsylvania Program. The U.S. Department of Agriculture, Soil Conservation Service, U.S. Department of Labor, Mine Safety and Health Administration (Coal Mine Safety and Health District 2), U.S. Bureau of Mines, and the U.S. Army Corps of Engineers generally considered the amendment to be acceptable or submitted an acknowledgment with no comment.

The U.S. Department of Labor, Mine Safety and Health Administration (MSHA) (Coal Mine Safety and Health District 1) commented that the permitting exemption in § 88.381(a) for preparation plants "located at the site of ultimate coal use" may not apply to MSHA health and safety inspection activities. The MSHA suggested that, since jurisdiction for reclamation permitting and safety inspections are defined under different state and federal statutes with the MSHA-OSHA cooperative agreement in effect for jurisdiction of co-generation plants, that a footnote or clarifying language may be appropriate in the general provisions of the state regulations. The Director acknowledges MSHA's concerns but notes that neither the Pennsylvania regulations nor their Federal counterparts can be construed as superseding, amending or repealing any MSHA laws or agreements because to do so is prohibited by section 702 of SMCRA.

### V. Director's Decision

Based on the findings discussed above, the Director is approving the program amendment to Pennsylvania's



Program, as submitted by Pennsylvania on June 2, 1992. The Federal regulations at 30 CFR part 938 codifying decisions concerning the Pennsylvania program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs with the Federal standards without undue delay. Consistency, of State and Federal standards is required by SMCRA.

#### *EPA Concurrence*

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*) The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

#### **VI: Procedural Determinations**

##### *Executive Order 12291*

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

##### *Executive Order 12778*

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731 and 732 have been met.

#### *National Environmental Policy Act*

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

#### *Paperwork Reduction Act*

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507 *et seq.*

#### *Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

#### **List of Subjects in 30 CFR Part 938**

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 8, 1992.

Alfred E. Whitehouse,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

#### **PART 938—PENNSYLVANIA**

1. The authority citation for part 938 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 938.15, a new paragraph (v) is added to read as follows:

#### **§ 938.15 Approval of regulatory program amendments.**

(v) The following amendment to the Pennsylvania program, as submitted to OSM on June 2, 1992, is approved

effective November 16, 1992: Revisions to Title 25, Pennsylvania Code Sections 88.1, 88.1, 89.5, 88.381 concerning coal preparation activities.

[FR Doc. 92-27724 Filed 11-13-92; 8:45 am]  
BILLING CODE 4310-05-M

#### **DEPARTMENT OF THE TREASURY**

##### **Office of Foreign Assets Control**

##### **31 CFR Part 515**

##### **Cuban Assets Control Regulations**

**AGENCY:** Office of Foreign Assets Control, Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the Cuban Assets Control Regulations, 31 CFR part 515 (the "Regulations"), to clarify earlier amendments and to modify certain procedures as they relate to transactions related to travel to, from, and within Cuba. Procedures related to authorization to provide travel, carrier, and family remittance forwarding services, previously included in § 515.560, have been simplified and placed in new sections to enable applicants to better understand the procedures and the requirements attendant on providing these services. In addition, for heightened enforcement of the embargo, the section authorizing the importation of certain goods as passenger baggage is revised to exclude alcohol and tobacco products, and the sections describing authorizing travel transactions for research limit the authorization to research that is generally noncommercial and academic.

**EFFECTIVE DATE:** November 16, 1992.

**FOR FURTHER INFORMATION:** Steven I. Pinter, Chief of Licensing (tel.: 202/622-2480), or William B. Hoffman, Chief Counsel (tel.: 202/622-2410), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

**SUPPLEMENTARY INFORMATION:** This final rule amends the Regulations for three purposes. Certain provisions of the Regulations are changed to heighten enforcement of the Cuban embargo. Other provisions clarify the effect of changes to the Regulations published on October 2, 1991 (56 FR 49846). Other provisions reorganize and simplify the provisions that apply to applicants for licenses to engage in travel, carrier, and family remittance forwarding services.

To ensure heightened enforcement of the Cuba embargo, § 515.540 is amended to exclude tobacco and alcohol products from the authorization for importation of the goods as accompanying baggage



from a third country. In addition, § 515.416 and § 515.560 are amended to clarify that travel transactions for research are authorized for research that is generally noncommercial and academic, and when there is a substantial likelihood of public dissemination of the research.

Following the publication of a final rule on October 2, 1991, it became necessary to clarify certain aspects of the general ban on transactions related to Cuban travel. In order to clarify the limitation contained in § 515.560 of the Regulations, this section is amended to state that the \$500 limit on travel-related transactions such as passport or visa fees and taxes, which was added to the Regulations in October 1991, applies to such transactions in any twelve-month period. This rule also amends § 515.564, which authorizes transactions related to travel to the United States by a Cuban national entering on a visa issued by the State Department. A new subsection is added which authorizes payment to Cuba for processing a letter of invitation or similar document necessary to facilitate travel to the United States by a Cuban national. Funds remitted for this transaction must be included within the \$500 limit on remittances to Cuba or a Cuban national for such travel established in § 515.564(c) in the final rule published in October 1991.

Finally, as part of the President's Regulatory Initiative, § 515.560 is further amended by removing from it the provisions related to authorization for travel and carrier services in conjunction with travel to Cuba. These procedures, as well as those governing family remittance forwarding services previously located in § 515.563, are now consolidated in a new section, § 515.566. These procedures establish the process for being authorized to provide services for U.S. persons authorized to travel to Cuba or to send remittances to close relatives in Cuba. Through the amendments contained in this final rule, this process has been simplified. Certain definitional language and interpretive material, previously located in § 515.560 and § 515.563, has been moved to § 515.333 and § 515.416, new sections added to the Regulations to simplify the presentation of the Regulations.

Because the Regulations involve a foreign affairs function, Executive Order 12291 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rule making is required for this rule, the Regulatory

Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

#### List of Subjects in 31 CFR Part 515

Administrative practice and procedure, Cuba, Currency, Travel restrictions.

For the reasons set forth in the preamble, 31 CFR part 515 is amended as follows:

#### PART 515—CUBAN ASSETS CONTROL REGULATIONS

1. The authority citation for part 515 continues to read as follows:

Authority: 50 U.S.C. App. 5, as amended; 22 U.S.C. 2370(a); Proc. 3447, 27 FR 1085, 3 CFR 1959-1963 Comp. p. 157; E.O. 9193, 7 FR 5205, 3 CFR 1938-1943 Cum. Supp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR 1943-1948 Comp., p. 748.

#### Subpart C—General Definitions

2. Section 515.333 is added to read as follows:

##### § 515.333 Depository institution.

The term *depository institution* means any of the following:

- (a) An insured bank as defined in section 3 of the Federal Deposit Insurance Act;
- (b) An insured institution as defined in section 408(a) of the National Housing Act;
- (c) An insured credit union as defined in section 101 of the Federal Credit Union Act; or
- (d) Any other institution that is carrying on banking activities pursuant to a charter from a Federal or state banking authority.

#### Subpart D—Interpretations

3. Section 515.416 is added to read as follows:

##### § 515.416 Professional research and similar activities.

(a) Section 515.560(a)(1) authorizes transactions related to travel to, from, and within Cuba for persons who are engaging in professional research generally of a noncommercial, academic nature and similar activities.

(1) Those covered by the "professional research" authorization are full-time professionals who travel to Cuba to do research in their professional areas, whose research is specifically related to Cuba and will constitute a full work schedule in Cuba, and where there is a substantial likelihood of public dissemination of the product of such research. No transactions related to tourist or recreational travel within Cuba are authorized under the general license for professional research, except

those that are consistent with a full schedule of research activities.

(2) "Similar activities" include attendance by professionals with an established interest in Cuba at professional meetings where research on Cuba is shared, and travel for noncommercial research purposes specifically related to Cuba by persons who are working to qualify themselves academically as professionals (e.g., certain graduate degree candidates). Study visits to Cuba in connection with pre-college or undergraduate college course work are not within the scope of professional research and similar activities authorized by the general license.

(b) Categories of travel which do not qualify as professional research or similar activities and for which specific license requests will normally be denied include recreational travel; tourist travel; travel in pursuit of a hobby; general study tours; general orientation visits; student class field trips; youth camps; research for personal satisfaction only; travel by fishing or bird-watching groups and similar affinity groups; and any travel for an authorized research purpose, if the schedule of activities includes free time, travel, or recreation in excess of that consistent with a full work schedule of professional research and similar activities.

(c) A group does not fall within the general license for professional research or similar activities merely because some members of the group could qualify individually under the general license. For example, the presence of a professional fish biologist who travels to Cuba to engage in professional research does not bring within the general license other persons who might travel with the fish biologist but whose principal purpose in travel is to engage in recreational or trophy fishing. The fact that such persons may engage in certain activities with, or under the direction of, the professional fish biologist, such as measuring or recording facts about their catch, does not bring these individuals' activities within the meaning of professional research or similar activities.

(d) A person does not fall within the general license for professional research or similar activities merely because that person is a professional who plans to travel to Cuba. For example, a professor of history interested in traveling to Cuba for the principal purpose of learning or practicing Spanish or attending general lectures devoted to Cuban culture and contemporary life would not fall within the general license. A doctoral



candidate in economics traveling to Cuba to undertake research for a dissertation on the Cuban economy would fall within the general license for activities directly related to the research but would not be authorized by the general license to stay an extra week in Cuba in order to attend a seminar on Cuban arts and crafts.

#### Subpart E—Licenses, Authorizations, and Statements of Licensing

4. Section 515.540 is revised to read as follows:

##### § 515.540 Passengers' baggage.

The importation of goods, otherwise prohibited by this part, which are brought into the United States as baggage by any person arriving in the United States other than a citizen or resident of the United States is hereby licensed, notwithstanding the provision of § 515.808, provided that such goods are not in commercial quantities and are not imported for resale. The authorization contained in this section shall not apply to the importation of alcohol or tobacco products except as authorized in § 515.560(c)(3).

5. Section 515.560 is revised to read as follows:

##### § 515.560 Certain transactions incident to travel to and within Cuba

(a)(1) *General license.* The transactions in paragraph (c) of this section are authorized in connection with travel to Cuba by:

(i) Persons who are officials of the United States Government or of any foreign government, or of any inter-governmental organization of which the United States is a member, and who are traveling on official business;

(ii) Persons who are traveling for the purpose of gathering news, making news or documentary films, engaging in professional research, generally of a noncommercial, academic nature, or similar activities as described in § 515.416; or

(iii) Persons, and persons traveling with them who share a common dwelling as a family with them, who are traveling to visit close relatives in Cuba.

(2) For purposes of this section, the term *close relative* means spouse, child, grandchild, parent, grandparent, great grandparent, uncle, aunt, brother, sister, nephew, niece, first cousin, or spouse, widow, or widower of any of the foregoing. The term *close relative* also means mother-in-law, father-in-law, son-in-law, sister-in-law, or brother-in-law.

(3) The general license contained in this section does not authorize transactions in connection with tourist travel to Cuba nor does it authorize

transactions in connection with business travel undertaken for any purpose other than those set forth in paragraph (a)(1) of this section.

(b) *Specific Licenses.* Specific licenses authorizing the transactions in paragraph (c) of this section will be issued in appropriate cases to persons desiring to travel to Cuba for humanitarian reasons, or for purposes of public performances, public exhibitions, or similar activities.

(c) The following transactions by persons licensed under paragraphs (a) and (b) of this section are authorized in connection with travel to, from, and within Cuba:

(1) All transportation-related transactions ordinarily incident to travel to and from Cuba provided no more than \$500 may be remitted to Cuba directly or indirectly in any twelve-month period for fees imposed by the Government of Cuba in conjunction with such travel.

(2) All transactions ordinarily incident to travel within Cuba, including payment of living expenses and the acquisition in Cuba of goods for personal consumption there, provided the total for such expenses does not exceed \$100 per day unless otherwise specifically licensed pursuant to the procedures contained in § 515.801.

(3) The purchase in Cuba, and importation as accompanied baggage, of merchandise with a foreign market value not to exceed \$100 per person for personal use only. Such merchandise may not be resold. This authorization may be used only once in every six consecutive months. As provided in § 515.206, informational materials are exempt from this restriction.

(4) All transactions incident to the processing and payment of checks, drafts, traveler's checks, and similar instruments negotiated in Cuba by any person under the authority of this section.

(d)(1) Unless otherwise specifically provided, neither this section nor any general or specific license contained in or issued pursuant to this section authorizes persons subject to U.S. jurisdiction to utilize charge cards, including but not limited to debit or credit cards, for expenditures in Cuba. Such transactions are prohibited by § 515.201.

(2) This section does not authorize the processing and payment by persons subject to U.S. jurisdiction, such as charge card issuers or intermediary banks, of charge card instruments (e.g., vouchers, drafts, or sales receipts) for expenditures in Cuba, and does not authorize a charge card issuer, or a foreign charge card firm owned or

controlled by U.S. persons, to deal with a Cuban enterprise, a Cuban national, or a third-country party, such as a franchisee, in connection with the extension of charge card services to any person in Cuba.

(e) Persons who travel in Cuba pursuant to provisions of this section shall not become nationals of Cuba solely because of such travel. This paragraph does not authorize any transaction prohibited by any other section of this part.

(f) This section does not authorize any person subject to the jurisdiction of the United States to make any investment in Cuba, establish any branch or agency in Cuba, or transfer any property to Cuba, except transfers by or on behalf of individual or group travelers authorized pursuant to paragraph (c) of this section.

(g) For purposes of this section, all necessary transactions involving fully sponsored or hosted travel to, from, and within Cuba are authorized, provided that no person subject to U.S. jurisdiction shall make any payment or transfer of any property or provision of any service to Cuba or a Cuban national in connection with such travel. Travel shall be considered fully sponsored or hosted for purposes of this section notwithstanding a payment by a person subject to U.S. jurisdiction for transportation to and from Cuba, provided that the carrier furnishing the transportation is not a Cuban national.

5. Section 515.563 is revised to read as follows:

##### § 515.563 Family remittances to nationals of Cuba.

(a) Remittances to any close relative of the remitter or of the remitter's spouse who is a national of Cuba and who is resident in Cuba or in the authorized trade territory are authorized, provided they are not made from blocked accounts. Such remittances may be made only as follows:

(1) For the support of the payee, or for the support of the payee and any member of his household, in amounts not exceeding \$300 in any consecutive 3-month period to any one payee or to any one household; and

(2) For the purpose of enabling the payee to emigrate from Cuba to the United States, in an amount not exceeding \$500 to be made only once to any one payee, provided that the payee is a resident of and within Cuba on the effective date of this section.

(b) The term *close relative* used with respect to any person means spouse, child, grandchild, parent, grandparent, uncle, aunt, brother, sister, nephew,



niece, first cousin or spouse, widow or widower of any of the foregoing. The term "close relative" also means mother-in-law, father-in-law, son-in-law, sister-in-law, or brother-in-law.

(c) The term *member of his household* used with respect to any person means a close relative sharing a common dwelling with such person.

6. Section 515.564 is amended by revising paragraph (c) and adding a new paragraph (d) to read as follows:

**§ 515.564 Certain transactions incident to travel to, from and within the United States by certain Cuban nationals.**

(c) Remittances by persons subject to U.S. jurisdiction to Cuba or a Cuban national, directly or indirectly, for transactions on behalf of a Cuban national which are authorized in paragraph (a) of this section may not exceed \$500 and, except as provided in paragraph (d) of this section, may be remitted only after the Cuban national has received a valid visa issued by the State Department. Authorized transactions include purchase of airline tickets and payment of visa fees or other travel-related fees.

(d) All transactions necessary to process a letter of invitation or similar document on behalf of a Cuban national are authorized, provided that any amount remitted to Cuba directly or indirectly in conjunction with the processing of such a document must be deducted from the \$500 limit established in paragraph (c) of this section.

7. Section 515.566 is added to read as follows:

**§ 515.566 Authorization of transactions incident to the provision of travel service, carrier service, and family remittance forwarding service.**

(a)(1) *Authorization of travel service provider.* The following persons wishing to provide services in connection with travel to Cuba are "travel service providers" for purposes of this part: Travel agents, ticket agents, commercial and noncommercial organizations that arrange travel to Cuba; tour operators; persons arranging through transportation to Cuba; persons chartering an aircraft or vessel on behalf of others in Cuba; and persons arranging hotel accommodations, ground transportation, local tours, and similar travel activities on behalf of others in Cuba. Travel service providers must obtain authorization from the Office of Foreign Assets Control before providing services with respect to travel to Cuba. The list stated above should not be considered exhaustive, as other persons may be "travel service providers" within

the meaning of this part. Opinions may be obtained from the Office of Foreign Assets Control concerning the applicability of this licensing requirement in individual cases.

(2) *Authorization of carrier service provider.* Persons subject to U.S. jurisdiction wishing to provide carrier services by aircraft or vessels incidental to their non-scheduled flights or voyages to, from, or within Cuba are "carrier service providers" for purposes of this part. Carrier service providers must obtain authorization from the Office of Foreign Assets Control before providing services with respect to non-scheduled flights or voyages to, from, or within Cuba. Carriage to or from Cuba of any merchandise, cargo or gifts, other than those permitted to individual travelers as accompanied baggage, must also be authorized by specific license issued pursuant to this part.

(3) *Authorization of family remittance forwarders.* Persons subject to U.S. jurisdiction, including persons who provide payment forwarding services and noncommercial organizations acting on behalf of donors, who wish to provide services in connection with the collection or forwarding of remittances authorized pursuant to this section must obtain authorization from the Office of Foreign Assets Control. Depository institutions, as defined in § 515.333, are exempt from this requirement.

(b) *Terms and conditions of authorization to engage in service transactions.* Authorization to engage in service transactions will be issued only upon the applicant's written affirmation and subsequent demonstration that it does not participate in discriminatory practices of the Cuban government against certain residents and citizens of the United States. Examples of such practices include, but are not limited to, charging discriminatory rates for air travel or requiring payment for services, such as hotel accommodations and meals, not desired, planned to be utilized, or actually utilized, based on such characteristics as race, color, religion, sex, citizenship, place of birth, or national origin. Authorization, whether a grant of provisional authorization or a license issued pursuant to this part, does not permit a travel or carrier service provider to provide services in connection with any individual's transactions incident to travel which are prohibited by this part.

(c) *Initial applications for licenses.* The initial application for a license shall contain:

(1) The applicant organization's name, address, telephone number, and the name of an official of the applicant

organization responsible for its licensed services;

(2) The state of applicant's organization, if a juridical entity, the address of its principal place of business and all branch offices, the identity and ownership percentages of all shareholders or partners, and the identity and position of all principal officers and directors;

(3) Copies of any bylaws, articles of incorporation, partnership agreements, management agreements, or other documents pertaining to the organization, ownership, control, or management of the applicant; and

(4)(i) In the case of applications for authorization to serve as travel or carrier service providers, a report on the forms and other procedures used to ensure that each customer is in full compliance with U.S. law implementing the Cuban embargo and does in fact qualify for one of the general licenses of § 515.580, or has received a specific license from the Office of Foreign Assets Control authorizing the customer's travel-related transactions. In the case of a customer traveling pursuant to general license, the applicant must demonstrate that it requires each customer to attest, in a signed statement, to his qualifications for the particular general license claimed. The statement must provide facts supporting the customer's belief that he qualifies for the general license. In the case of a customer traveling under a specific license, the applicant must demonstrate that it requires the customer to furnish it with a copy of the license. The copy of the signed statement or the specific license must be maintained on file with the applicant, and/or

(ii) In the case of applications for authorization as family remittance forwarders, a report on the forms, account books, and other recordkeeping procedures used to determine whether each customer has exceeded the annual ceiling on remittances to any one household or payee established in this section, or sent remittances to persons other than close relatives as defined in § 515.563(b); and the method by which remittances are sent to Cuba and the procedures used by the applicant to ensure that the remittances are received by the persons intended.

(d) *Required reports and recordkeeping.* (1) Each specific license or grant of provisional authority shall require that the service provider furnish quarterly reports to the Department of the Treasury, Office of Foreign Assets Control, Washington, DC 20220, during the term of the license. The required content of such reports and their due



dates shall be provided to the service provider in a letter authorizing the provider to commence services. Each such report will cover only the three-month period immediately preceding the date of the report.

(2) While the names and addresses of individual travelers or remitters, the number and amount of each remittance, and the name and address of each recipient, as applicable, need not be submitted with quarterly reports, this information must be retained on file with all other information required by § 515.601. These records must be furnished to the Office of Foreign Assets Control on demand pursuant to § 515.602.

(3) *Presentation of passenger lists.* Tour operators, persons operating an aircraft or vessel, or persons chartering an aircraft or vessel on behalf of others, for travel to, from, and within Cuba must furnish the U.S. Customs Service on demand a list of passengers on each flight or voyage to, from, and within Cuba.

(e) *Procedures governing the grant of provisional authority, denial, suspension, or revocation of authority to engage in service transactions—(1) Grant of provisional authority.* Following submission of a complete application as described in paragraph (c) of this section, the submission of any additional relevant information, and a preliminary evaluation by the Office of Foreign Assets Control, the applicant will be notified in writing that provisional authority has been granted to provide the services contemplated in the application. This provisional authority to provide services will remain in effect pending a final decision to grant or deny the license.

(2) *Denial of license—(1) Notice of denial.* If the Director, Office of Foreign Assets Control, determines that the application for a license to engage in service transactions related to travel to Cuba, carrier service transactions related to travel to Cuba, or transactions related to family remittance forwarding should be denied for any reason, notice of denial shall be given to the applicant. The notice of denial shall state the reasons for the denial.

(ii) *Grounds for denial.* The causes sufficient to justify denial of an application for a license may include, but need not be limited to:

(A) Any cause which would justify suspension or revocation of the authority of a service provider pursuant to § 515.566(e)(3);

(B) Failure to file a full and complete application;

(C) Any willful misstatement of pertinent facts in the application;

(D) Evidence indicating that the applicant participates in discriminatory practices of the Cuban Government against certain residents and citizens of the United States as described in § 515.566(b); or

(E) A reputation imputing to the applicant criminal, dishonest, or unethical conduct, or a record of such conduct.

(3) *Suspension or revocation of a license or provisional authorization.* A license or provisional authorization issued pursuant to this section may be suspended for a specific period of time, or revoked, for the following reasons:

(i) The service provider has willfully made or caused to be made in any application for any license, request for a ruling or opinion, or report be filed with the Office of Foreign Assets Control, any statement that was, at the time and in light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any application, request for ruling or opinion, or report any material fact that was required;

(ii) The service provider has failed to file timely reports or comply with the recordkeeping requirements of his license or provisional authorization.

(iii) The service provider has been convicted; at any time after filing an application for a license under § 515.566, of any felony or misdemeanor that:

(A) Involved the importation, exportation, or transfer of property in violation of any law or regulation administered by the Office of Foreign Assets Control;

(B) Arose directly out of the conduct of the business covered by the license; or

(C) Involved larceny, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, misappropriation of funds, or a violation of the Customs laws, export or import control laws, or banking laws.

(iv) The service provider has violated any provision of law enforced by the Office of Foreign Assets Control or the rules or regulations issued under any such provision;

(v) The service provider has counseled, commanded, induced, procured, or knowingly aided or abetted the violation by any other person of any provision of any law or regulation referred to above;

(vi) The service provider has, in the course of the business covered by the license, with felonious intent, in any manner willfully and knowingly deceived, defrauded, misled, threatened, or coerced any client or prospective client; or

(vii) The service provider has committed any other act or omission that demonstrates unfitness to conduct the business covered by the license.

(f) *Restrictions on arrival and departure time.* Except as authorized by the Director, Office of Foreign Assets Control, any travel service provider or carrier service provider arranging transportation between Cuba and the United States must insure that arrival and departure at the port of entry or exit in the United States occur during the general business hours of the U.S. Customs Service (as defined in 19 CFR 101.6) at the relevant port of entry or exit.

Dated: September 1, 1992.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: September 25, 1992.

John P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 92-27685 Filed 11-10-92; 4:26 pm]

BILLING CODE 4810-25-M

## OFFICE OF PERSONNEL MANAGEMENT

48 CFR Parts 1602, 1609, 1632 and 1652

RIN 3206-AE66

### Federal Employees Health Benefits Program; Letter of Credit Provisions

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is making final its interim regulations that reflect a revised system of making recurring premium payments to experience-rated Federal Employees Health Benefits (FEHB) Program carriers on a letter of credit (LOC) basis; implement Section 7002(b) of the Omnibus Budget Reconciliation Act of 1990 which specifies that, to the maximum extent practicable, payments to FEHB plans participating in an LOC arrangement shall be made on a checks-presented basis; relocate the regulations on minimum standards for health benefit carriers at 5 CFR 890.202 to the Contractor Qualifications section at 48 CFR 1609.70; and relocate the regulations on recurring premium payments to carriers at 5 CFR 890.505 to the Contract Financing section at 48 CFR 1632.170.

**EFFECTIVE DATE:** December 16, 1992.

**FOR FURTHER INFORMATION CONTACT:** Abby L. Block, (202) 606-0191.



**SUPPLEMENTARY INFORMATION:** On April 20, 1992, OPM published interim regulations in the *Federal Register* (57 FR 14323 and 57 FR 14358) that updated part 890 of title 5 of the Code of Federal Regulations (CFR) and 48 CFR parts 1602, 1609, 1632 and 1652, the Federal Employees Health Benefits Acquisition Regulation (FEHBAR), with regard to the payment of premiums to experience-rated Federal Employees Health Benefits Program (FEHBP) carriers on a letter of credit (LOC) basis, and relocated two sections from title 5 to title 48 of the CFR where they more appropriately belong.

OPM received written comments from an association representing health maintenance organizations. OPM has published a discussion of these comments in its rule under part 890 published elsewhere in this issue of the *Federal Register*.

We are amending the interim regulations to add a heading for Subchapter B—Acquisition Planning in the FEHBAR.

#### E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

#### Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect the administrative procedures used by OPM and FEHB plans.

#### List of Subjects in 48 CFR Parts 1602, 1609, 1632, and 1652

Administrative practice and procedure, Government employees, Health insurance, Retirement.

U.S. Office of Personnel Management.

Douglas A. Brook,  
Acting Director.

Accordingly, under the authority of 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301, OPM is adopting its interim regulations under 48 CFR parts 1602, 1609, 1632, and 1652 published on April 20, 1992 (57 FR 14358), as final rules with the following change:

1. 48 CFR chapter 16 is amended by adding a subchapter heading immediately before part 1605 to read as follows:

#### Subchapter B—Acquisition Planning

[FR Doc. 92-27612 Filed 11-13-92; 8:45 am]

BILLING CODE 6325-01-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 663

[Docket No. 920778-2263]

RIN No.: 0648-AD63

#### Pacific Coast Groundfish Fishery

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Final rule.

**SUMMARY:** NOAA issues this final rule to implement conservation and management measures as prescribed in Amendment 6 to the Fishery Management Plan for the Pacific Coast Groundfish Fishery (FMP). This rule establishes a license limitation limited entry program for the commercial groundfish fishery based on the issuance of gear-specific Federal permits. The intended effect of this final rule is to promote conservation and improve stability and economic viability of the fishing industry, by limiting or reducing harvesting capacity in the Pacific coast groundfish fishery.

**EFFECTIVE DATES:** January 1, 1993, except that § 663.7 (q), (r), (t), and (u) and § 663.30(b) are effective January 1, 1994.

**ADDRESSES:** Copies of Amendment 6 and the Supplemental Environmental Impact Statement/Regulatory Impact Review/Regulatory Flexibility Analysis (SEIS/RIR/RFA) are available from Larry Six, Executive Director, Pacific Fishery Management Council, 2000 SW. First Avenue, suite 420, Portland, OR 97201.

**FOR FURTHER INFORMATION CONTACT:** William L. Robinson at 206-526-6140, Rodney McInnis at 310-980-4040, or the Pacific Fishery Management Council at 503-328-6352.

#### SUPPLEMENTARY INFORMATION:

##### Background

Amendment 6 to the FMP was prepared by the Pacific Fishery Management Council (Council) and submitted to the Secretary of Commerce (Secretary) for approval under the provisions of the Magnuson Fishery Conservation and Management Act (Magnuson Act) as amended, 16 U.S.C. 1801 *et seq.* A notice of availability and a proposed rule for Amendment 6 were published in the *Federal Register* on June 10, 1992 (57 FR 24589), and July 22, 1992 (57 FR 32499), respectively. The extended comment period on Amendment 6 closed August 21, 1992 (August 8, 1992, 57 FR 34757), and the

Secretary approved Amendment 6 on September 4, 1992.

As implemented by this final rule, Amendment 6 is intended to begin to address directly the issue of increasing amounts of excess and unutilizable fleet harvesting capacity in the Pacific coast groundfish fishery. The Amendment institutes a license limitation program based on the issuance of Federal permits to control the overall fleet harvest capacity of the three major gear types (trawl, longline, and fish pot) that account for the vast majority (over 90 percent) of the Pacific coast groundfish harvest. "Fish pot," as used throughout Amendment 6, refers to trap or pot gear. Portuguese longline (commercial vertical hook-and-line) is considered a type of exempted gear. Accordingly, the term "longline", as used throughout this rule, does not include Portuguese longline.

Amendment 6 is intended to control the capacity of the groundfish fishing fleet in three main ways: (1) Limiting the overall number of vessels; (2) limiting the number of vessels using each of the three major gear types; and (3) limiting increases in vessel harvest capacity by limiting vessel length. Amendment 6 divides the Pacific coast commercial groundfish fishery into two segments. The first segment is the limited entry fishery consisting of vessels with limited entry permits endorsed for longline and/or trap (or pot) gear and all vessels using trawl gear. Vessels using trawl gear must have a limited entry permit endorsed for trawl gear. The second segment is the open access fishery consisting of vessels using all other gear (called "exempted" gear in Amendment 6), as well as vessels that do not have limited entry permits endorsed for use of longline or trap (or pot) gear but that make small landings with longline or trap (or pot) gear. Vessels landing groundfish in the open access segment must comply with any trip landing and frequency limits established for the open access fishery. Allocations of groundfish will be made to the limited entry and open access fisheries based on their historic harvest levels during a specific "window period." Vessel owners must have Federal permits to participate in the limited entry fishery effective January 1, 1994.

Permits will be endorsed for one or more of three gear types (trawl, longline, and trap (or pot)), with four possible types of endorsement for each gear type. Vessels meeting specific minimum landing requirements (MLRs) with a particular gear during the qualifying "window period" (July 11, 1984, through August 1, 1988) will receive "A" endorsements for that gear. Generally,



"A" endorsements are the only transferable endorsements.

Endorsements may not be transferred separately from the permit with which they were issued. An adjustment period is provided for vessels that landed a specified minimum amount of groundfish prior to August 1, 1988, but do not meet the MLRs for an "A" endorsement, through the issuance of a non-transferable "B" endorsement. A "B" endorsement allows the vessel to participate in the limited entry fishery through December 31, 1996, at which time, all "B" endorsements will expire. Those vessels under construction, conversion, or that were purchased during the window period, and as a result were unable to meet the MLRs, are provided an opportunity to demonstrate their commitment to participate in the groundfish fishery through the issuance of "provisional A" endorsements. The regulations at 663.35 also provide the opportunity to qualify for "provisional A" endorsements in other limited circumstances such as the prohibition of exempted gear. "Provisional A" endorsements will be upgraded to "A" endorsements if specific minimum amounts of groundfish are landed for 3 consecutive years. "Designated Species B" endorsements, valid for a single year, allow vessels to harvest Pacific whiting, shortbelly rockfish, and jack mackerel if the vessels with permanent limited entry permits do not intend to harvest the entire allowable catch.

Endorsements for more than one type of gear may be affixed to a limited entry permit. When the limited entry fishery is open, a vessel fishing under a limited entry permit may also fish with open access gear (i.e., exempted gear and longline or trap (or pot) gear for which an endorsement is not held). However, all fishing with open access gear must comply with the regulations (trip limits, etc.) applicable to the open access fishery and all catch counts against the limited entry quota. A vessel with a limited entry permit may also participate in the open access fishery when the limited entry fishery is closed, but not with gear for which its limited entry permit is endorsed. After the limited entry fishery is closed, the catch of a vessel with a limited entry permit counts toward the open access quota.

No more than one limited entry permit will be issued for each qualifying vessel. Permits will be issued only to the current owner of the vessel that qualifies for a permit, unless the previous owner has reserved, by the express terms of a written contract, the right to the limited entry permit, or if a

vessel that would have qualified for an endorsement was totally lost prior to initial issuance of a limited entry permit.

All limited entry permits must be renewed annually.

A size endorsement (length overall) on each permit will prevent an owner from increasing the length of a vessel for which the permit is issued by more than 5 feet. Two or more limited entry permits with "A" gear endorsements for the same type of limited entry gear may be combined to qualify for a permit with a larger size endorsement. The size endorsement on the new "combined" vessel's permit will be determined by a process to be developed by the NMFS Northwest Regional Director (Regional Director) in consultation with the Council and with the professional advice of marine architects and other qualified individuals, and will be implemented by regulation. In the case of a vessel endorsed for trawl gear, when the length of the vessel to which a permit is transferred is smaller by more than 5 feet than the originally endorsed length, the permit will be reissued with a size endorsement for the smaller length.

Limited entry permits may be transferred to other vessels and owners; however, the permits will continue to be restricted by size and gear endorsements. Non-transferable endorsements (i.e., all endorsements except "A" endorsements) will expire with the transfer of the permit.

The preamble to the proposed regulations (July 22, 1992, 57 FR 32499) contains a more complete description of the regulations implementing Amendment 6.

#### Comments and Responses

Written comments were submitted by 6 fisheries associations (California Seafood Council, Coast Driggers Association, Pacific Coast Federation of Fishermen's Associations, Inc., California Gillnetters Association, Commercial Fishermen of Santa Barbara, and Southern California Trawlers Association), 3 corporations (Oceantrawl, Inc., Pacific Driggers, Inc., and Supreme Alaska Seafoods, Inc.), and 11 individuals.

*Comment 1:* Five individuals, one organization, and one corporate commenter urged the Secretary to approve and implement Amendment 6, citing the need to control overcapacity in the fishery now that all stocks have been fished down from virgin biomass levels to stable maximum sustainable yield levels. Increasing harvesting capacity combined with stable yields have resulted in overly restrictive and inefficient management restrictions on participants in the fishery.

*Response:* Amendment 6 was approved and is being implemented.

*Comment 2:* Four fishermen's associations commented that California fishermen, many who fish south of Point Conception and many who fish gill nets, assert they were unable to meet minimum landing requirements due to seismic testing, El Nino, and landing restrictions imposed by State law. These commenters suggested that fishermen should be given "provisional A" permits restricted to the area south of Point Conception based on landings of State managed groundfish.

*Response:* Although seismic testing may have had some effect on vulnerability of groundfish to fishing gear, the minimum landing requirements during the 4-year 1984-88 period are sufficiently low so that any vessel owner with any significant level of dependence on federally managed groundfish should have been able to meet them. The El Nino effects were severe only in 1982 and 1983. Although El Nino effects may have changed the availability of groundfish in different areas, no lethal effects have been documented on groundfish stocks. Thus, as with the effects of seismic testing, any vessel owner with a significant dependence on the federally managed groundfish fishery during the 4-year window period should have been able to meet the minimum landing requirements. Issuance of limited entry permits based on landings of non-federally managed groundfish, even if restricted to the area south of Point Conception, California, is inconsistent with the primary purpose of Amendment 6, which is to reduce or limit harvest capacity in the Council-managed groundfish fishery. Issuing permits to vessel owners who did not have any significant degree of dependence upon federally managed groundfish would permit increases in harvesting capacity in the area south of Point Conception. Vessel owners south of Point Conception are no different than other groups of fishermen along the coast who did not meet the minimum landing requirements and are not eligible for initial issuance of a limited entry permit. It should be noted, however, that any vessel owners desiring to increase their participation in the federally managed groundfish fishery after initial implementation of the limited entry program may purchase permits. In addition, those vessels that harvested federally managed groundfish at low levels may continue to harvest groundfish under the allocations and restrictions applicable to the open access fishery without a permit (except



for trawl gear, which may not be used in the open access fishery).

**Comment 3:** Four fishermen's associations commented that California State Initiative 132 threatens to displace inshore gillnetters, which the Council took into consideration by including a "prohibited gear" provision by which such displaced fishermen could qualify for "Provisional A" permits. Due to State landing restrictions, however, inshore gillnetters are unable to meet the minimum landing requirements.

**Response:** The Council included the "prohibited gear" provision of Amendment 6 in recognition of the rights and historical dependence on federally managed groundfish of vessel owners who used a gear type that was subsequently prohibited by either a State government or the Federal government. This provision allows a vessel owner who landed a sufficient quantity of federally managed groundfish to meet the minimum landing requirements with a gear type that was subsequently prohibited to qualify for a "Provisional A" permit with one of the three gear endorsements (trawl, longline, or trap). This special provision was intended to recognize historical participation in the federally managed groundfish fishery of vessel owners using prohibited gear to the same degree as vessel owners using non-prohibited gear. However, it would be inconsistent with the primary objective of Amendment 6, which is to limit or reduce harvesting capacity, and would be unfair to vessel owners that had demonstrated historical participation in the fishery, to issue limited entry permits to vessel owners who did not meet the modest minimum landing requirements of Amendment 6.

In addition, data collected by the California Department of Fish and Game from observers placed on gillnet vessels in southern California between 1983 and 1989 show that only a small portion of their catch was federally managed groundfish. Species in the groundfish management unit comprised only about 7 percent by number of the observed catch, and half of that was not retained. Lingcod and rockfish, the only groundfish species subject to a State combined landing limit of 200 pounds per trip, represented less than 1 percent of the total observed catch in the gillnet fisheries. Seventy-five percent of the rockfish and 67 percent of the lingcod caught were retained. These data do not support the contention that the State's limit on landing rockfish and lingcod caught in nearshore gillnets was a significant factor in gillnet vessels

meeting the minimum landing requirements established by this rule.

**Comment 4:** One individual claimed that allowing boat owners with limited entry permits to utilize their limited entry vessels and gear in the open access fishery, whereas open access boat owners must purchase a permit to participate in the limited entry fishery, is unequal protection under the law and is unconstitutional.

**Response:** Amendment 6 does not allow vessel owners with limited entry permits to use the gear type(s) endorsed on the permit in the open access fishery. Limited entry permit holders may fish their vessel in the open access fishery only if they use gear for which they do not hold an endorsement (i.e., exempted gear, or longline or trap gear for which they do not have an endorsement). Trawl gear may not be used in the open access fishery.

As discussed at length elsewhere in this preamble, the amendment, and supporting documents, there are reasonable, non-arbitrary reasons for initially limiting access to those vessels that met the minimal landing requirements. Therefore, the system of excluding vessels that do not have permits from the limited entry sector of the fishery comports with equal protection principles.

**Comment 5:** Several commenters alleged that too much time has passed between the end of the qualifying window (August 1, 1988) and the proposed implementation of Amendment 6. These fishermen claim they could not afford to wait and see whether the Council would ultimately adopt the limited entry program, but had to either leave the fishery in 1988 or make considerable investments to continue fishing. Therefore, they believe the qualifying window should be extended to include vessel owners with more recent participation in the fishery.

**Response:** The Council designed the MLRs and window period to accommodate fishermen with substantial dependence on the fishery at the time the Council decided to develop a limited entry plan. Notice of the August 1, 1988, qualification cutoff date was published in the Council's newsletter, major trade magazines, fishery association newsletters, and the *Federal Register*. Potential new entrants into the Pacific coast groundfish fishery after the end of the July 11, 1984, to August 1, 1988, qualifying window period were warned that such entry was highly speculative and new entrants would not necessarily be given initial access rights in a limited entry program. The purpose of the notice was to

discourage speculative investment in the fishery solely for the purpose of obtaining a windfall gain from the marketability of permits. It is reasonable to believe that most new entrants to the fishery were aware of the cutoff but made a conscious business decision to participate in the fishery despite the warning.

The groundfish fishery is extremely complex, and it involves numerous groups with diverse interests, all of whom the Council listened to and considered. While it is unfortunate that it took so much time to develop this amendment, the delays were caused by the Council's attempts to review and revise the amendment in response to varied and numerous comments from the public and NMFS.

**Comment 6:** Two commenters alleged that Amendment 6 as applied to Pacific whiting is arbitrary and capricious, violates National Standard 4, and violates some provisions of the U.S. Constitution because, among other things, it discriminates against factory trawlers and other whiting vessels that participated in the whiting fishery before or after the window period. They assert that the window period allocates the entire Pacific whiting catch for catcher boats that caught as little as 41 percent of the catch in their best year during the window period. They suggest that Pacific whiting should be completely excluded from the limited entry system, or a different window period apply for whiting MLRs because there were not enough markets for U.S. fishermen during the 1984-88 window period to utilize the entire quota. A third commenter expressed concern that the amendment would exclude factory trawlers from the fishery when they were a key element in Americanizing the fishery.

**Response:** Amendment 6 views the groundfish fishery as a whole. Although the Pacific whiting portion did not become fully "Americanized" until after the 1984-88 window period, harvesting capacity sufficient to take all of the whiting allowable catch existed in the fishery during the window period (see Section 4.4.1 of the SEIS/RIR/RFA). Over 70 percent of the whiting harvested during the window period was harvested by U.S. catcher vessels and sold to U.S. shoreside processors and foreign at-sea processors. In 1988, the last year of the window period, over 230,000 mt (86 percent of the whiting landings) were taken by U.S. catcher vessels. By 1989, the entire whiting harvest, over 300,000 mt, was taken by U.S. catcher vessels. The reason the entire quota was not harvested during



the window period by American vessels was the lack of economic incentive. Factory trawlers and motherships with catcher vessels entered the fishery when markets for whiting products improved and seasonal restrictions in the pollock fishery allowed a window for vessels to enter the whiting fishery between pollock seasons. Those vessels that began harvesting whiting after the window period were responding to changes in markets that resulted in increased economic incentives. Had these new vessels not entered the whiting portion of the groundfish fishery, it is likely that vessel capacity already participating in the Pacific coast groundfish fishery would have taken their place.

Amendment 6 limits those who initially qualify for a permit. It does not limit who may purchase and subsequently own a permit with a type "A" endorsement. Owners of vessels that participated in the whiting fishery after the window period have the option of purchasing a permit or permits from current permit holders in order to continue harvesting whiting. The issue here is which vessels are given the benefit of an initial permit and which vessel owners must purchase permits. The fact that the whiting quota was not fully utilized by American harvesters and processors during the window period does not make the circumstances of late entrants to the whiting fishery significantly different from other groundfish trawl, longline, and trap vessels that began harvesting widow rockfish, dover sole, or sablefish after the close of the window period.

Nevertheless, the Council did recognize that circumstances may arise such that the vessels holding limited entry permits did not have sufficient interest or incentive to harvest certain underutilized species, including Pacific whiting. To ensure full utilization by American vessels, Amendment 6 provides that in such circumstances, a limited number of temporary limited entry permits with "Designated Species B" endorsements will be issued to those vessels with the longest history fishing for that species to provide for the harvest of the available whiting.

For the above reasons, the Secretary believes that Amendment 6, as applied to the whiting portion of the groundfish fishery, is reasonable, comports with National Standard 4, and is neither arbitrary nor capricious.

*Comment 7:* Two commenters argued that limited entry does not solve habitat damage or bycatch problems. They contend that the Council should limit gear to those types of gear that do not

damage the ocean floor instead of a limited entry program.

*Response:* Limited entry is intended to address issues of overcapitalization in the existing groundfish fleet and manageability of the fishery. The issue of habitat damage and bycatch can be addressed, if needed, by other types of management measures authorized by the FMP. Regardless of which gears are used to conduct the fishery, in the absence of some form of limited access, the fishery will become overcapitalized, profits will diminish, inefficiencies will increase, and management will become more complex and less effective.

*Comment 8:* One commenter argued that Amendment 6 will not solve the serious allocation issues and the trend towards restrictive trip landing limits.

*Response:* The commenter correctly observed that Amendment 6 may not alleviate the need to allocate scarce resources among different sectors of the fishery. Nor will Amendment 6 eliminate the need for trip landing limits for several species or species groups. However, Amendment 6 will decrease, to some extent, the restrictiveness of these measures. With future increases in harvesting capacity limited, and current harvesting capacity reduced somewhat, pressure to allocate between sectors should be reduced and the trend towards increasingly restrictive trip landing limits should be halted.

*Comment 9:* One commenter pointed out that limited entry will allow marginal boat owners to sell their boats (and permits) to more aggressive owners causing an increase in utilized harvest capacity.

*Response:* The commenter correctly observes a trend observed in other fisheries after limited entry is implemented. Marginal vessel owners who receive initial permits often sell those permits to more aggressive fishermen resulting in an increase in fishing effort. It is important to note in this instance that, although effort may increase, actual vessel harvesting capacity does not increase. These possible increases of effort are likely to be offset to some degree by restricting new harvest capacity from entering the fishery.

*Comment 10:* One commenter is opposed to Amendment 6 because he was not aware the landings criteria had changed from a single landing of 1 pound to more restrictive minimum landing standards.

*Response:* The Council designed the MLRs to recognize fishermen with substantial dependence on the fishery at the time the Council decided to develop a limited entry plan. Although the MLR

of a single landing of 1 pound was one option considered by the Council, it was never the preferred alternative and it was not adopted because it did not achieve the Council's objective for a limited entry program of limiting or reducing harvesting capacity in the groundfish fishery. Summaries of Council actions were published in the Council newsletter and notice of Council advisory committee meetings, Council meetings, and public hearings were published in the Council's newsletter, major trade magazines, fishery association newsletters, and the Federal Register.

*Comment 11:* One corporate commenter alleged that Amendment 6 violates National Standards 1 and 5 because the SEIS/RIR/RFA fails to analyze the following key factors relating to the allocations and efficiency of the limited entry plan:

- (1) The need for substantial additional capital investment in shoreside plants;
- (2) The lack of availability of markets for products from shoreside plants;
- (3) The continued failure of catcher boats and shoreside plants to utilize their allocations;
- (4) The economic impact on factory trawlers of exclusion from the fishery;
- (5) The lack of availability of alternative fisheries for factory trawlers;
- (6) The ability of the factory trawlers to ensure achievement of the optimum yield (OY) and marketing of all of the products from the fishery; and
- (7) The lack of net benefits to the nation.

*Response:* The commenter's reference to capital investment and markets for shoreside processors are not germane to Amendment 6. Amendment 6 addresses only the amount of harvesting capacity within the groundfish fishery. It does not affect where fishermen sell their catch. Catcher vessels with limited entry permits are free to sell their catch to either shoreside or at-sea processors at least to the extent that any processing limits for the two processing sectors are not exceeded. For further discussion of the effects of Amendment 6 on factory trawlers, and specifically with regard to the alleged failure of U.S. catcher vessels to utilize the full whiting harvest, refer to the response to comment 6 above. The discussion concerning net economic benefits to the Nation contained in the SEIS/RIR/RFA concludes that positive net benefits to the Nation are likely to result from implementation of Amendment 6.

*Comment 12:* One commenter warned that Amendment 6 will add to the Council's management burden, particularly that dealing with allocation.



*Response:* The commenter is correct in observing that the Council must now address the additional management burden of allocating between the open access and limited entry fisheries, as well as recommend appropriate trip landing limits for each fishery. The allocation burden should not be difficult, however, since the basis for the allocation, historical catch, is described clearly in the Amendment. Even in the absence of a limited entry program, the Council's management burden was growing increasingly difficult. With no limit on the number of vessels participating in each sector of the fishery, all sectors have become overcapitalized and the pressure to allocate among sectors has increased in recent years. In addition, trip landing limits have become increasingly restrictive resulting in shorter fisheries and less efficient use of existing harvest capacity. Amendment 6, over time, should provide some relief from the management burden imposed on fishermen.

#### Changes From the Proposed Rule

The statements in the preamble to the proposed rule were either incorrect or unclear. In the first instance, the preamble stated that "Designated Species B" endorsements, valid for a single year, would allow vessels to harvest underutilized species if the vessels with "permanent" limited entry permits do not intend to harvest the entire allowable catch. The words "other types of endorsements" should have been used instead of "permanent" because some other types of endorsements, particularly "B" and "Provisional A" are *not* permanent. Second, the statement that permits will be issued only to the current owner of the vessel unless the previous owner has reserved, by the express terms of a written contract "by which vessel ownership is transferred", is incorrect and conflicts with the proposed regulations, which are correct. The phrase "by which vessel ownership is transferred" should not have been published in the preamble to the proposed rule. Finally, the statement that a "Provisional A" endorsement will expire at the end of any consecutive 365-day period (during the 3-year upgrade period) in which a vessel's landings or deliveries (at sea) do not meet the landing requirements for upgrade should be clarified to indicate that the qualifying landing for an upgrade may be made at any time during each of the three consecutive 365-day periods following the purchase or the beginning of construction or conversion of the vessel.

In § 663.31, the definition of "Open access fishery" is corrected by replacing "trawl gear" with "exempted gear and".

In § 663.33(c) the word "qualified" is replaced with "qualifies".

Section 663.33(f) has been rewritten in order to more completely describe how the vessel size endorsement is determined when permits are initially issued or transferred.

In § 663.34(a)(3)(iv), the words "in consultation with the Council" are inserted after "The Regional Director \* \* \*".

A new § 663.34(a)(4) has been added that clarifies that a person who reserved, by the express terms of a written contract, the right to a future limited entry permit on the basis of the catch history of a vessel that meets the MLRs may receive an "A" endorsement for each type of limited entry gear for which the vessel qualifies.

Section 663.35(a)(4) has been reorganized and revised to clarify the qualification standards for persons seeking a "Provisional A" endorsement for a replacement vessel.

In § 663.35(b)(1) the word "permit" is inserted after "A limited entry \* \* \*".

In § 663.35(e)(1) the words "of the 3 consecutive" are inserted after "A "Provisional A" endorsement expires at the end of any \* \* \*".

In § 663.41(a)(2)(i), the word "take" in the first sentence is replaced with the word "make".

Sections 663.41(f) and 663.43 are revised to reflect NOAA's authority to apply permit sanctions under the Magnuson Act from transfers to all NOAA activities relating to limited entry permits, including issuance, renewal, and transfers.

In § 663.32(b) and in appendix E, section (d)(1), the words "effective January 1, 1994," were deleted to clarify that the calculation procedure will be accomplished before January 1 of each year.

#### Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), concurred in the Regional Director's determination that Amendment 6 is necessary for the conservation and management of the Pacific groundfish fishery and that it is consistent with the Magnuson Act and other applicable law.

The Council prepared a Final Supplemental Environmental Impact Statement (FSEIS) for this amendment; a notice of availability was filed with the Environmental Protection Agency on August 14, 1992, and was published in the *Federal Register* on August 21, 1992 (57 FR 37975).

The Assistant Administrator determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the regulatory impact review (RIR) prepared by the Council, which demonstrates positive long-term economic benefits to the fishermen under the management measures. A copy of the RIR may be obtained from the Council (see **ADDRESSES**).

The Council initially determined that this rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (RFA). During Secretarial Review, NMFS determined that the rule could have significant effects on small entities, and the SEIS/RIR was retitled as an SEIS/RIR/Initial Regulatory Flexibility Analysis. A copy of this document was transmitted to the Small Business Administration. The extent of effects on small entities is uncertain because, among other things, vessel specific data was unavailable on many current participants and future prices for limited entry permits are unknown. The Council prepared a Final Regulatory Flexibility Analysis, which is available from the Council (See **ADDRESSES**).

This final rule contains several collection-of-information requirements subject to the Paperwork Reduction Act that have been approved by the Office of Management and Budget (OMB) under Control No.: 0648-0203. The requirements are for application forms: (1) To apply for the issuance of initial permits; (2) to apply to transfer ownership of a permit; (3) to apply to transfer the permit to a different vessel; and (4) to apply for annual renewal of the permit. The public reporting burden for this collection is estimated to average 1 hour per response for initial application for a permit, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Renewal of permits is estimated to average 0.3 hours and permit transfers 0.2 hours. Comments on these information requirements may be sent to Mr. Rolland A. Schmitten, Director, Northwest Region, National Fisheries Service, Sand Point Way NE., BIN C15700, Seattle, WA 98115-0070 and to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Washington, DC 20503.

NMFS issued a Biological Opinion under the Endangered Species Act on August 10, 1990, pertaining to



Amendment 4 of the FMP. It concluded that implementation of the FMP (including Amendment 4) would not be likely to jeopardize the continued existence of any of the species considered. NMFS listed Snake River sockeye salmon as endangered on November 20, 1991, and Snake River spring/summer and fall chinook as threatened on April 22, 1992. As a result, NMFS reinitiated consultation under section 7 of the Endangered Species Act and a Biological Opinion addressing the effects of the groundfish fishery (as managed under Amendment 6) on these species was completed and signed by the Assistant Administrator for Fisheries, NMFS, on August 28, 1992. The Biological Opinion concluded that the Pacific groundfish fishery conducted under the authority of the FMP, as amended, is not likely to jeopardize the continued existence of these recently listed species.

The Council determined that this rule is consistent to the maximum extent practicable with the approved coastal zone management programs of the States of Washington, Oregon, and California. Letters were sent to the three states requesting their review and comment. Since the States did not respond, their concurrence is inferred.

This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

#### List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fisheries, Fishing, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 10, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 663 is amended as follows:

#### PART 663—[AMENDED]

1. The authority citation for part 663 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 663.7, new paragraphs (q) through (u) are added to read as follows:

##### § 663.7 Prohibitions.

(q) Effective January 1, 1994, fish with trawl gear, or carry trawl gear on board a vessel that also has groundfish aboard (unless the vessel is in continuous transit from outside the fishery management area to a port in

Washington, Oregon, or California), without having a limited entry permit valid for that vessel affixed with a gear endorsement for trawl gear.

(r) Effective January 1, 1994, fail to carry aboard a vessel that vessel's limited entry permit.

(s) Make a false statement on an application for issuance, renewal, transfer, vessel registration, or replacement of a limited entry permit.

(t) Effective January 1, 1994, take and retain, possess, or land groundfish in excess of the landing limit for the open access fishery without having a valid limited entry permit for the vessel affixed with a gear endorsement for the gear used to catch the fish.

(u) Effective January 1, 1994, carry on board a vessel, or deploy, limited entry gear when the limited entry fishery for that gear is closed.

3. A new subpart C is added to 50 CFR part 663 to read as follows:

#### Subpart C—Limited Entry and Open Access Fisheries

##### Sec.

- 663.30 General.
- 663.31 Definitions.
- 663.32 Allocations.
- 663.33 Limited entry fishery—General.
- 663.34 "A" gear endorsement.
- 663.35 "Provisional A" gear endorsement.
- 663.36 "B" gear endorsement.
- 663.37 "Designated Species B" gear endorsement.
- 663.38 Hardship exceptions.
- 663.39 Replacement of lost vessels.
- 663.40 Fees.
- 663.41 Limited entry permits.
- 663.42 Permit appeals.
- 663.43 Permit sanctions.

#### Subpart C—Limited Entry and Open Access Fisheries

##### § 663.30 General.

(a) This subpart applies to non-treaty Indian commercial fishing for groundfish in the Pacific Coast Groundfish Fishery, and provides procedures and criteria for the administration of the limited entry and open access fisheries established by Amendment 6.

(b) Effective January 1, 1994, all commercial fishing for groundfish must be conducted in accordance with this subpart, except such fishing by treaty Indian tribes as may be separately provided for.

##### § 663.31 Definitions.

In addition to the definitions in the Magnuson Act and in §§ 620.2 and 663.2 of this chapter, the terms used in this subpart have the following meanings:

*Amendment 6* means Amendment 6 to the Pacific Coast Groundfish Plan.

*Exempted gear* means all types of fishing gear except trawl, longline, and trap (or pot) gear.

*Fisheries Management Division (FMD)* means the Chief, Fisheries Management Division, Northwest Regional Office, National Marine Fisheries Service, 7600 Sand Point Way NE., Seattle WA 98115, telephone (206) 526-6140, or a designee.

*Length overall*, with respect to a vessel, means the length overall set forth in the Certificate of Documentation (CG-1270) issued by the U.S. Coast Guard for a documented vessel, or in a registration certificate issued by a state or the U.S. Coast Guard for an undocumented vessel; for vessels which do not have the length overall stated in an official document, the length overall is the length overall as determined by the U.S. Coast Guard or by a marine surveyor in accordance with the U.S. Coast Guard method for measuring length overall.

*Limited entry fishery* means the fishery composed of vessels using trawl gear, longline, and trap (or pot) gear fished pursuant to the harvest guidelines, quotas, and other management measures governing the limited entry fishery.

*Limited entry gear* means longline or trap (or pot) gear used under the authority of a valid limited entry permit affixed with an endorsement for that gear, and all trawl gear.

*Limited entry permit* means the permit required to participate in the limited entry fishery, and includes the gear endorsements affixed to the permit unless specified otherwise.

*Longline*, for purposes of this subpart only, means a stationary, buoyed, and anchored groundline with hooks attached, but does not include commercial vertical hook-and-line gear.

*Mt* means metric ton.

*Open access fishery* means the fishery composed of vessels using exempted gear, and longline and trap (or pot) gear fished pursuant to the harvest guidelines, quotas, and other management measures governing the open access fishery.

*Open access gear* means all types of fishing gear except:

- (1) Longline or trap (or pot) gear fished by a vessel that has a limited entry permit affixed with a gear endorsement for that gear; and
- (2) Trawl gear.

*Owner*, as used in this subpart, means a person who is identified as the current owner in the Certificate of Documentation (CG-1270) issued by the U.S. Coast Guard for a documented vessel, or in a registration certificate



issued by a state or the U.S. Coast Guard for an undocumented vessel.

*Person*, as used in this subpart, means any individual, corporation, partnership, association or other entity (whether or not organized or existing under the laws of any state), and any Federal, state, or local government, or any entity of any such government that is eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a).

*Regional Director* means the Northwest Regional Director, National Marine Fisheries Service, 7600 Sand Point Way NE., Seattle, WA 98115, telephone (206) 526-6150.

*Totally lost* means that the vessel being replaced no longer exists in *specie*, or is absolutely and irretrievably sunk or otherwise beyond the possible control of the owner, or the costs of repair (including recovery) would exceed the repaired value of the vessel.

*Window period* means the period from July 11, 1984, through August 1, 1988.

#### § 663.32. Allocations.

(a) *General*. Effective January 1, 1994, the commercial portion of the Pacific Coast Groundfish Fishery, excluding the treaty Indian fishery, is divided into limited entry and open access fisheries.

(b) *Allocation procedures*. Separate allocations for the limited entry and open access fisheries will be established annually for certain species and/or areas using the procedures described in § 663.21 and sections II.E. and H. of the appendix to this part.

(c) *Catch accounting between the limited entry and open access fisheries*. Any groundfish caught by a vessel with a limited entry permit will be counted against the limited entry allocation while the limited entry fishery for that vessel's limited entry gear is open. When the fishery for a vessel's limited entry gear has closed, groundfish caught by that vessel with open access gear will be counted against the open access allocation. All groundfish caught by vessels without limited entry permits will be counted against the open access allocation.

(d) *Additional guidelines*. Additional guidelines governing determination of the limited entry and open access allocations are in section II.E.(d) of the appendix to this part.

(e) *Treaty Indian fisheries*. Certain amounts of groundfish may be set aside annually for tribal fisheries prior to dividing the balance of the allowable catch between the limited entry and open access fisheries. Tribal fisheries conducted under a set-aside are not subject to this subpart.

#### (f) *Recreational fisheries*.

Recreational fishing for groundfish is outside the scope of, and not affected by, this subpart. Certain amounts of groundfish may be specifically allocated to the recreational fishery, and will be set aside prior to dividing the commercial allocation between the commercial limited entry and open access fisheries.

#### § 663.33 Limited entry fishery—General.

(a) Participation in the limited entry fishery requires that the owner of a vessel have a limited entry permit affixed with a gear endorsement registered for use with that vessel for the gear being fished. There are four types of gear endorsements: "A," "provisional A," "B," and "designated species B." More than one type of gear endorsement may be affixed to a limited entry permit. While the limited entry fishery is open, vessels fishing under limited entry permits may also fish with open access gear. All fishing with open access gear is subject to regulations applicable to the open access fishery. Vessels with limited entry permits may also participate in the open access fishery when the limited entry fishery is closed, but only with open access gear.

(b) At initial issuance, no more than one limited entry permit will be issued for each qualifying vessel. The limited entry permit will be issued only to the current owner of the vessel, unless:

(1) The previous owner of a vessel qualifying for an "A" or a "designated species B" gear endorsement has, by the express terms of a written contract, reserved the right (or, for "designated species B" endorsements, seniority status) to the limited entry permit, in which case the limited entry permit will be issued to the previous owner based on the catch history of the qualifying vessel.

[Note: If the limited entry rights have been reserved by contract, the current vessel owner no longer has rights to the issuance of a limited entry permit for the qualifying vessel]

; or

(2) A vessel that would have qualified for an "A" gear endorsement was totally lost prior to initial issuance of a limited entry permit. In this case, the owner of the vessel at the time it was lost retains the right to a limited entry permit with an "A" gear endorsement, unless the owner conveyed the right to another person by the express terms of a written contract, in which case the person holding the contractual rights is entitled to the permit (see § 663.39).

(c) A vessel qualifies for initial issuance of a limited entry permit by meeting the initial issuance criteria for

one or more gear endorsements (reference §§ 663.34, 663.35, 663.36, and 663.37).

(d) Limited entry permits are transferable as follows:

(1) The Permit holder may transfer (by sale, assignment, lease, bequest, interstate succession, barter, trade, gift, or other form of conveyance) the limited entry permit to a different person, or register the permit for use with a different vessel under the same ownership, subject to the conditions set forth in this subpart.

(2) Gear endorsements may not be transferred separately from the limited entry permit.

(3) Except as provided in §§ 663.35(b)(2), 663.36(b)(2), and 663.37(b)(2), only "A" gear endorsements remain valid with the transfer of a limited entry permit.

(e) Only a person eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a) may be issued or may hold (by ownership or otherwise) a limited entry permit.

(f) *Vessel size endorsements*. (1) The limited entry permit will be endorsed with the length overall for the size of the vessel that initially qualified for the permit except:

(i) If the permit is initially issued under § 663.35(a)(4)(i)(B) for a replacement vessel that is more than 5 feet (1.52 meters) longer than the replaced vessel, the permit will be endorsed for the size of the replacement vessel.

(ii) If the permit is initially issued to a replacement trawl vessel that is more than 5 feet (1.52 meters) shorter than the replaced vessel, it will be endorsed for the size of the smaller replacement vessel.

(iii) If the permit is registered for use with a trawl vessel that is more than 5 feet (1.52 meters) shorter than the size for which the permit is endorsed, it will be endorsed for the size of the smaller vessel.

(iv) When permits are combined into one permit to be registered for use with a vessel requiring a larger size endorsement (reference paragraph (g) of this section), the new permit will be endorsed for the size of the larger vessel.

(2) *Limitations of size endorsements*. (i) A limited entry permit endorsed only for gear other than trawl gear may be registered for use with a vessel up to 5 feet (1.52 meters) longer than, the same length as, or any length shorter than, the size endorsed on the existing permit without requiring a combination of permits under paragraph (g) of this



section or a change in the size endorsement.

(ii) A limited entry permit endorsed for trawl gear may be registered for use with a vessel between 5 feet (1.52 meters) shorter and 5 feet (1.52 meters) longer than the size endorsed on the existing permit without requiring a combination of permits under paragraph (g) of this section or a change in the size endorsement under paragraph (f)(1)(iii) of this section.

(g) *Combining limited entry permits.* Two or more limited entry permits with "A" gear endorsements for the same type of limited entry gear may be combined to "step-up" to a permit with a larger size endorsement. The Regional Director, with professional advice of marine architects and other qualified individuals, and after consultation with the Council, will develop and implement, through amendment of this section, a standardized measure of harvest capacity for the purpose of determining the appropriate endorsed lengths for limited entry permits created by combining two or more permits with smaller size endorsements. The harvest capacity represented by the larger size endorsement may not exceed the sum of the harvest capacities of the limited entry permits being combined.

(h) *Limited entry permits indivisible.* Limited entry permits may not be divided for use by more than one vessel.

#### § 663.34 "A" gear endorsement.

(a) *Initial issuance criteria.* (1) The current owner of a vessel that met the minimum landing requirements (MLRs) during the window period may receive an "A" endorsement for each type of limited entry gear for which the vessel qualifies.

(2) The MLRs are:

(i) Use of trawl gear to make: At least 9 separate days with landings over 500 pounds (227 kg) of any groundfish species except Pacific whiting; or 450 mt of landings of any groundfish species except Pacific whiting; or 17 separate days with landings over 500 pounds (227 kg) of Pacific whiting; or 3,750 mt of landings of Pacific whiting.

(ii) Use of longline gear to make: At least 6 separate days with landings over 500 pounds (227 kg) of any groundfish species; or 37.5 mt of landings of any groundfish species.

(iii) Use of trap (or pot) gear to make: At least 5 separate days with landings over 500 pounds (227 kg) of any groundfish species; or 150 mt of landings of any groundfish species.

(iv) *Exceptions:* Any landing that included salmon or shrimp will not count toward meeting the MLRs.

(3) *Small limited entry fleets.* (i) Small limited entry fisheries that are controlled by a local government, are in existence as of July 11, 1991, and that have negligible impacts on the groundfish resource, may be certified as consistent with the goals and objectives of Amendment 6 and incorporated into the limited entry fishery.

(ii) If a fleet is certified and incorporated into the limited entry fishery, vessels in the fleet at the time of incorporation will be issued limited entry permits with "A" endorsements for appropriate gear.

(iii) A permit issued to a vessel in a certified fleet is only valid when the vessel is operating under and in conformance with the certified program. Such a permit and endorsement may be transferred to another vessel that will operate in the same certified fleet, provided the total number of vessels in the fleet does not increase. If more vessels are added to a fleet in a certified limited entry program, these additional vessels will not receive "A" endorsements unless the program is recertified for the greater number of vessels, and the larger fleet incorporated into the limited entry fishery.

(iv) The Regional Director, in consultation with the Council, may place an upper limit on the amount of groundfish that an incorporated fleet, or vessels operating in an incorporated fleet, may land.

(v) *Procedures for incorporation.* Upon application of a representative of a small limited entry fleet, the Regional Director, after receiving a recommendation from the Council, may incorporate the fleet in to the limited entry fishery, if the Regional Director:

(A) Determines that the fleet has a negligible impact on the groundfish resource; and

(B) Certifies the activities of the fleet as consistent with the goals and objectives of Amendment 6.

(4) A person who owned a vessel that met the MLRs and who reserved, by the express terms of a written contract, the right to a future limited entry permit on the basis of the catch history of that vessel, may receive an "A" endorsement for each type of limited entry gear for which the vessel qualifies.

(5) A "provisional A" endorsement may be upgraded to an "A" endorsement in accordance with § 663.35(c).

(b) *Attributes.* (1) A limited entry permit with an "A" endorsement entitles the holder to participate in the limited entry fishery for all groundfish species with the type(s) of limited entry gear specified in the endorsement.

(2) An "A" endorsement is transferable with the limited entry permit to another person, or a different vessel under the same ownership under § 663.41(d).

(3) An "A" endorsement expires on failure to renew the limited entry permit to which it is affixed (see § 663.41(c)).

#### § 663.35 "Provisional A" gear endorsement.

(a) *Initial issuance criteria.* The following persons qualify for "provisional A" gear endorsements:

(1) A person who contracted to have a vessel constructed or converted may qualify for a "provisional A" endorsement for the vessel if:

(i) A contract for part of the construction (including laying of the keel) or conversion was signed, and earnest money of 10 percent or more of the value of the contract was paid, prior to August 1, 1988;

(ii) The contract for the vessel under construction (or ownership of a vessel under conversion) is not transferred from the contract holder (or owner) between August 1, 1988, and the issuance of the "provisional A" endorsement (unless the transfer was caused by the death of the vessel owner, in which case the transferee may apply for the "provisional A" endorsement);

(iii) For vessels qualifying under the construction provision, no landing of any species of fish was made anywhere by the vessel prior to July 11, 1984; for vessels qualifying under the conversion provision, no landing of any species of fish was made anywhere between the time conversion began and July 11, 1984; and

(iv) For vessels qualifying under the construction provision, at least one landing of any species of fish was made anywhere prior to September 30, 1990; for vessels qualifying under the conversion provision, at least one landing of any species of fish was made after conversion began and prior to September 30, 1990.

(2) A vessel owner who constructed or converted a vessel may qualify for a "provisional A" endorsement for the vessel if:

(i) Prior to August 1, 1988, the keel was laid or conversion began;

(ii) Vessel ownership is not transferred from the owner between August 1, 1988, and issuance of the "provisional A" endorsement (unless the transfer was caused by the death of the vessel owner, in which case the transferee may apply for the "provisional A" endorsement);

(iii) For vessels qualifying under the construction provision, no landing of



any species of fish was made anywhere by the vessel prior to July 11, 1984; for vessels qualifying under the conversion provision, no landing of any species of fish was made anywhere between the time conversion began and July 11, 1984; and

(iv) For vessels qualifying under the construction provision, at least one landing of any species of fish was made anywhere prior to September 30, 1990; for vessels qualifying under the conversion provision, at least one landing of any species of fish was made after conversion began and prior to September 30, 1990.

(3) A vessel owner who purchased the vessel during the window period, and used a limited entry gear to catch and land groundfish during the window period, but whose vessel does not meet the MLRs for an "A" gear endorsement, may qualify for a "provisional A" endorsement for the limited entry gear(s) used during the window period, provided ownership of the vessel is not transferred between August 1, 1988, and the issuance of the "provisional A" endorsement (unless the transfer was caused by the death of the vessel owner, in which case the transferee may apply for the "provisional A" endorsement).

(4) Persons owning replacement vessels qualify by the following:

(i) The owner of a replacement vessel that is more than 5 feet (1.52 meters) longer than the replaced vessel must choose between:

(A) An "A" endorsement on a limited entry permit with the size endorsement applicable to the replaced vessel; or

(B) A "provisional A" endorsement on a limited entry permit with a size endorsement for the replacement vessel, if the vessel meets the criteria in subparagraph 663.35(a)(4)(ii) below.

(ii) An owner of a replacement vessel more than 5 feet (1.52 meters) longer than the replaced vessel may be issued a "provisional A" endorsement for the length of the replacement vessel if, prior to September 30, 1990, the owner has:

(A) Acquired a replacement vessel;

(B) Disposed of the replaced vessel; and

(C) Reserved, by the express terms of a written contract, the right to a future limited entry permit on the basis of the catch history of the replaced vessel.

(iii) If the limited entry rights have been reserved by contract, the replaced vessel entitles no subsequent owner to issuance of a limited entry permit for that vessel.

(iv) The "provisional A" endorsement will be issued only for the gear(s) for which the replaced vessel would have qualified for an "A" endorsement.

(v) For purposes of this paragraph (a)(4), "replacement vessel" means a vessel that replaces, through construction, conversion, purchase or trade, a vessel that would qualify for an "A" gear endorsement.

(5) If, after the window period, an exempt gear is prohibited by Washington, Oregon, or California or the Secretary of Commerce, the owners of vessels using such gear, who would not otherwise qualify for an "A" or "provisional A" endorsement, may qualify for a "provisional A" endorsement for only one of the three limited entry gears, if the vessel used the prohibited gear to make sufficient landings of groundfish during the window period to meet the MLR for the limited entry gear. If a vessel would qualify for an endorsement for more than one limited entry gear, the owner must choose the type of gear for which the endorsement will be issued. If an "A" or "provisional A" endorsement was previously issued for the vessel, and the endorsement was subsequently transferred or expired, no "provisional A" endorsement will be issued.

(b) *Attributes.* (1) A limited entry permit with a "provisional A" endorsement entitles the holder to fish for all groundfish species with the type(s) of limited entry gear specified in the endorsement.

(2) A "provisional A" endorsement is not transferable with the limited entry permit to another person, and may not be used with a different vessel under the same ownership, unless:

(i) The vessel for which the endorsement was issued is totally lost, and the permit is transferred to a replacement vessel by the permit holder (see § 663.39); or

(ii) The transfer is caused by the death of the vessel owner, in which case the transferee may hold the "provisional A" endorsement.

(3) A "provisional A" endorsement will be issued for only one type of limited entry gear, to be selected by the vessel owner, for vessels qualifying under the construction or conversion, and "prohibited gear" provisions. "Provisional A" endorsements for more than one type of limited entry gear may be issued for vessels qualifying under the purchase and replacement provisions.

(4) The maximum (but not minimum) duration of a "provisional A" endorsement is 3 years (see paragraph (e) of this section).

(5) A "provisional A" endorsement will not be issued to a vessel that has already failed to meet the upgrade criteria for an "A" endorsement (see paragraph (c) of this section) at the time

application for the "provisional A" endorsement is made. A vessel that has met the upgrade criteria for an "A" endorsement at the time application for a limited entry permit is made will be issued an "A" endorsement. A vessel will be considered qualified for an "A" endorsement as of the date the "provisional A" endorsement upgrade criteria are met.

(c) *Upgrading.* (1) A "provisional A" endorsement may be upgraded to an "A" endorsement.

(2) For a "provisional A" endorsement to be upgraded, the vessel must meet one of the landing requirements in paragraph (c)(3) of this section in each of the three consecutive 365-day periods beginning with the earliest date of: endorsement issuance; for vessels qualifying under the construction provision, first landing of any species of fish by the vessel anywhere; for vessels qualifying under the conversion provision, first landing of any species of fish by the vessel anywhere after the date conversion began; vessel purchase for vessels qualifying under purchase provisions; or vessel replacement for vessels qualifying under replacement provisions.

(3) The landing requirements to upgrade a "provisional A" endorsement to an "A" endorsement are as follows:

(i) Use of trawl gear to make: At least 2 separate days with landings over 500 pounds (227 kg) of any groundfish species except Pacific whiting; or 113 mt of landings of any groundfish species except Pacific whiting; or 5 days or 938 mt of landings of Pacific whiting.

(ii) Use of longline gear to make: At least 2 separate days with landings over 500 pounds (227 kg) of any groundfish species; or 10 mt of landings of any groundfish species.

(iii) Use of trap (or pot) gear to make: At least 2 separate days with landings over 500 pounds (227 kg) of any groundfish species; or 36 mt of landings of any groundfish species.

(iv) *Exceptions:* Any landing that included salmon or shrimp will not count toward meeting the landing requirements.

(d) *Conversion.* "Conversion," for purposes of determining a vessel's "provisional A" gear endorsement eligibility, means that:

(1) Prior to the conversion, the vessel was structurally incapable of fishing for groundfish with the limited entry gear selected for the "provisional A" endorsement;

(2) The conversion included a structural change to the vessel which enabled it to fish for groundfish with the selected gear (for longline and trap (or



pot) vessels, the structural change may include installation of a gear hauler); and

(3) The amount invested in conversion (including all equipment and gear) was more than 25 percent of the current appraised value of the converted vessel, or \$10,000, whichever is less, of which not more than one-fifth of the investment was for fishing gear. For purposes of this paragraph, "gear" means fishing gear not permanently affixed to the vessel (not welded or bolted), and, with respect to electronic equipment, includes only equipment specifically required for use of the gear in the groundfish fishery.

(e) *Expiration.* (1) A "provisional A" endorsement expires at the end of any of the three consecutive 365-day periods (during the 3-year qualifying period) in which a vessel's landings do not meet the applicable landing requirement.

(2) A "provisional A" endorsement expires on failure to renew the limited entry permit (see § 663.41).

(3) A "provisional A" endorsement that expires will not be reissued.

#### § 663.36 "B" gear endorsement.

(a) *Initial issuance criteria.* (1) The current owner of a vessel that did not meet the MLRs for an "A" endorsement may receive a "B" endorsement for each type of limited entry gear used by the vessel to land at least 500 pounds (227 kg) of groundfish on at least 3 separate days at any time prior to August 1, 1988, if the owner has continuously owned the vessel since the date of the first of the three qualifying landings.

(2) For purposes of the "continuous ownership" requirement for initial issuance of "B" endorsements only, vessel ownership will not be considered to change, even if there is a change in the ownership shown on the vessel documentation, so long as there is not change in the controlling interest in the vessel. "Controlling interest" means, in the case of a corporation, ownership of stock possessing at least 51 percent of total combined voting power of all classes of stock entitled to vote of such corporation, or at least 51 percent of the total value of shares of all classes of stock of such corporations; in the case of a trust or estate, ownership of an actuarial interest of at least 51 percent of such trust or estate; in the case of a partnership, ownership of at least 51 percent of the profits interest or capital interest of such partnership; and, in the case of a sole proprietorship, ownership of such sole proprietorship.

(3) Any landing that included salmon or shrimp will not count toward meeting the landing requirements.

(4) A vessel owner who has failed to meet the landing requirements for upgrading a "provisional A" endorsement to an "A" endorsement, but who meets the landing and ownership requirements in paragraph (a)(1) of this section, may be issued a "B" endorsement, provided that the "provisional A" endorsement was not issued under § 663.35(a)(4) (replacement of smaller vessels).

(b) *Attributes.* (1) A limited entry permit with a "B" endorsement entitles the holder to fish for all groundfish species with the type(s) of limited entry gear specified in the endorsement.

(2) A "B" endorsement is not transferable to another person, and may not be used with another vessel under the same ownership, unless the vessel for which the endorsement was issued is totally lost, and the permit is transferred to a replacement vessel owned by the same owner (see § 663.39).

(c) *Expiration.*

(1) All "B" endorsements expire on December 31, 1996.

(2) A "B" endorsement expires on failure to renew the limited entry permit (see § 663.41(c)).

#### § 663.37 "Designated Species B" gear endorsement.

(a) *Issuance criteria—(1) General.* *Designated species* means Pacific whiting, jack mackerel north of 39° North latitude, and shortbelly rockfish. Bycatch allowances in fisheries for these species will be established using the procedures specified for incidental allowances in joint venture and foreign fisheries at section II.J. of the appendix to this part.

(2) *Catch limit.* On or about October 1 of each year, the FMD will determine the commitment of persons with limited entry permits with "A," "provisional A," and "B" gear endorsements (the "limited entry fleet") to harvest each designated species for delivery to domestic processors during the coming year.

"Commitment" means a permit holder's contract or agreement with a specific domestic processor to deliver an estimated amount of the designated species. The "designated species B" endorsement catch limit is the harvest guideline or quota for the designated species minus the commitment of the limited entry fleet. If the commitment is less than DAP and the harvest guideline or quota for the species, "designated species B" endorsements valid for delivery to domestic processors will be issued in numbers necessary to reach but not exceed the harvest guideline or quota. "Designated species B" endorsements also may be issued for delivery to foreign processors of

designated species for which a JVP is established. If at any time during the fishing year the FMD determines that any part of the limited entry fleet commitment will not be taken, the Regional Director will make a reapportionment to the "designated species B" endorsement catch limit. The amount of the annual limited entry fleet commitment, "designated species B" endorsement catch limit, and the amounts and timing of any reapportionments to the "designated species B" endorsement catch limit will be announced in the *Federal Register*.

(3) *Procedure for issuance.* Owners of vessels applying for "designated species B" endorsements must apply on or before November 1 of each year for a "designated species B" endorsement for the following year. Applicants are required to specify their commitments for delivery of the designated species for the coming year. On or about November 1 of each year, the FMD will establish a prioritized list of applicants based on seniority (number of years the vessel has fished for the designated species). Vessels with equal seniority will be ranked equally. "Designated species B" endorsements will be issued first to all vessels with the highest seniority, then to those with the next highest seniority, and so on down the list. No further endorsements will be issued when it is estimated that the commitments of applicants receiving endorsements is sufficient to take the "designated species B" catch limit. If there are insufficient commitments by senior applicants to take the "designated species B" catch limit, additional applications will be ranked by lottery and a number of endorsements sufficient to take the catch limit will be issued.

(b) *Attributes.* (1) A limited entry permit with a "designated species B" endorsement entitles the holder to fish only for the species, and only with the gear, specified in the endorsement.

(2) A "designated species B" endorsement is not transferable to another person, and may not be used with a different vessel under the same ownership, unless the vessel has been totally lost and replaced consistent with the provisions of § 663.39, in which case the replacement vessel has the same seniority as the lost vessel for purposes of a "designated species B" endorsement.

(3) A "designated species B" endorsement is valid only for the fishing year for which it is issued.

#### § 663.38 Hardship exceptions.

Hardship exceptions to initial issuance and upgrade criteria exist for



limited entry permits with "A," "provisional A," and "B" gear endorsements. Under the permit issuance process of § 663.41, a hardship exception may be granted to a permit applicant for a vessel that does not meet the initial issuance or upgrade criteria for a gear endorsement. No hardship exceptions will be granted for vessels that did not meet the MLRs or landing requirements during the window period for economic reasons, or because of loss or inactivity of the vessel as a result of a violation of Federal or state law (including non-fisheries violations). If a hardship exception is granted, a limited entry permit will be issued with gear endorsement(s) for which the applicant's vessel would have qualified if the hardship had not intervened. In order to obtain a hardship exception, the applicant must prove that the vessel's failure to qualify was caused by one of the following hardship situations:

(a) Insufficient documented landings with legal groundfish gear during the applicable qualifying period due to inadequate or incorrect official documentation of landings. In this situation, evidence other than official landing records may be considered.

(b) Construction or conversion criteria are not met due to delay(s) beyond the control of the vessel owner.

(c) Death, illness, or injury of a vessel owner, or litigation involving the vessel, prevented the vessel from meeting the MLRs, landing requirements, construction, conversion, replacement, or upgrade criteria during the applicable qualifying period.

#### § 663.39 Replacement of lost vessels.

(a) If a vessel that has a "provisional A," "B," or "designated species B" gear endorsement, or, prior to limited entry permit issuance, would qualify for an "A," "provisional A," "B," or "designated species B" gear endorsement, is totally lost, it may be replaced within 2 years of the date of the loss, and its rights (in the case of "designated species B" gear endorsements, seniority status) to a limited entry permit transferred to a replacement vessel, unless the loss was the result of the willful act of the vessel owner or someone acting on the owner's behalf. The 2-year period allowed for replacement may be extended if circumstances beyond the control of the person holding the replacement rights prevented acquisition of a replacement vessel within 2 years of the loss.

(b) Rights may only be transferred to a replacement vessel owned by the same owner as the lost vessel, except for vessels with "A" endorsements, and vessels qualifying for "A" endorsements

that were lost before a limited entry permit was issued. (See § 663.33(b)(2)).

(c) The size endorsement on the limited entry permit issued for the replacement vessel shall be the length overall of the lost vessel, except that a "provisional A" endorsement may be issued for the size of the replacement vessel under § 663.35(a)(4).

#### § 663.40 Fees.

The Regional Director will charge fees to cover administrative expenses related to issuance of limited entry permits, including initial issuance, renewal, transfer, vessel registration, replacement, and appeals. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application.

#### § 663.41 Limited entry permits.

(a) *Initial issuance—issuing authority; schedule.* (1) Limited entry permits will be issued by the FMD.

(2) Applications for initial issuance of limited entry permits and gear endorsements must be submitted between January 1, 1993, and June 30, 1993. Initial limited entry permits will be issued between July 1, 1993, and December 31, 1993. Exceptions to this schedule are as follows:

(i) An owner of a vessel qualifying for a "provisional A" gear endorsement because the vessel's gear has been prohibited must make application within 180 days of the date the prohibition is effective, or between January 1, 1993, and June 30, 1993, whichever is later.

(ii) An owner of a vessel applying for a "B" gear endorsement because the vessel has failed to meet the "provisional A" upgrade criteria after January 1, 1993, must make application within 180 days of failure to meet the upgrade criteria.

(iii) Owners of vessels applying for "designated species B" endorsements must apply on or before November 1 of each year for a "designated species B" endorsement for the following fishing year.

(iv) Owners of vessels that are part of a limited entry fleet incorporated under § 663.34(a)(3) must apply within 180 days of incorporation.

(3) Untimely applications will be rejected unless the applicant demonstrates that circumstances beyond the applicant's control prevented submission of the application during the specified period. Illness, injury, or death of the potential

applicant are the primary grounds on which untimely applications may be accepted.

(b) *Applications for limited entry permits and gear endorsements.* (1) Application forms for limited entry permits and gear endorsements are available from the FMD. Contents of the application, and required supporting documentation, are specified in the application form.

(2) A separate, fully completed, and accurate application form, together with required supporting documentation, must be submitted for each vessel for which a limited entry permit is sought.

(3) Upon receipt of an incomplete or improperly executed application, the FMD will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(4) If the application is complete on its face, the FMD may request further documentation as necessary to act on the request.

(c) *Renewal of limited entry permits and gear endorsements.* (1) Limited entry permits expire at the end of each calendar year, and must be renewed between October 1 and November 30 of each year in order to remain in force the following year.

(2) Notices to renew limited entry permits will be issued by FMD prior to September 1 each year to the most recent address of the permit holder. The permit holder shall provide FMD with notice of any address change within 15 days of the change.

(3) A limited entry permit that is allowed to expire will not be renewed unless the FMD determines that failure to renew was proximately caused by the illness, injury, or death of the permit holder.

(d) *Transfer and registration of limited entry permits and gear endorsements.* (1) Upon transfer of a limited entry permit, the FMD will reissue the permit in the name of the new permit holder with such gear endorsements as are eligible for transfer with the permit. No transfer is effective until the limited entry permit has been reissued and is in the possession of the new permit holder.

(2) A limited entry permit may not be used with a vessel unless it is registered for use with that vessel. Limited entry permits will normally be registered for use with a particular vessel at the time the permit is issued, renewed, transferred, or replaced. A permit not registered for use with a particular vessel may not be used. If the permit



will be used with a vessel other than the one registered on the permit, a registration for use with the new vessel must be obtained from the FMD and placed aboard the vessel before it is used under the permit.

(3) Application forms for the transfer and registration of limited entry permits are available from the FMD. Contents of the application, and required supporting documentation, are specified in the application form.

(4) The FMD will maintain records of all limited entry permits that have been issued, renewed, transferred, registered, or replaced.

(e) *Evidence and burden of proof.* A vessel owner (or person holding limited entry rights under the express terms of a written contract) applying for issuance, renewal, transfer, or registration of a limited entry permit has the burden to submit evidence to prove that qualification requirements are met. The following evidentiary standards apply:

(1) A certified copy of the current vessel document (U.S. Coast Guard or state) is the best evidence of vessel ownership and length overall;

(2) A certified copy of a state fish receiving ticket is the best evidence of a landing, and of the type of gear used;

(3) A copy of a written contract reserving or conveying limited entry rights is the best evidence of reserved or acquired rights; and

(4) Such other relevant, credible evidence as the applicant may submit, or the FMD or the Regional Director request or acquire, may also be considered.

(f) *Initial decisions.* Initial decisions regarding issuance, renewal, transfer, and registration of limited entry permits, and endorsement upgrade, will be made by the FMD. Adverse decisions shall be in writing and shall state the reasons therefor. The FMD may decline to act on an application for issuance, renewal, transfer, or registration of a limited entry permit if the permit sanction provisions of the Magnuson Act at 16 U.S.C. 1858(a) and implementing regulations at 15 CFR part 904, subpart D, apply.

#### § 663.42 Permit appeals.

(a) Decisions on appeal of initial decisions regarding issuance, renewal, transfer, and registration of limited entry permits, and endorsement upgrade, will be made by the Regional Director.

(b) Appeals decisions shall be in writing and shall state the reasons therefor.

(c) Within 30 days of an initial decision by the FMD denying issuance, renewal, transfer, or registration of a limited entry permit, or endorsement

upgrade, on the terms requested by the applicant, an appeal may be filed with the Regional Director.

(d) The appeal must be in writing, and must allege facts or circumstances to show why the criteria in this subpart have been met, or why a hardship exception should be granted.

(e) In the appellant's discretion, the appeal may be accompanied by a request that the Regional Director seek a recommendation from the Council as to whether the appeal should be granted. Such a request must contain the appellant's acknowledgement that the confidentiality provisions of the Magnuson Act at 16 U.S.C. 1853(d) and 50 CFR part 603 are waived with respect to any information supplied by the Regional Director to the Council and its advisory bodies for purposes of receiving the Council's recommendation on the appeal. In responding to a request for a recommendation on appeal, the Council will apply the provisions of this subpart in making its recommendation as to whether the appeal should be granted.

(f) Absent good cause for further delay, the Regional Director will issue a written decision on the appeal within 45 days of receipt of the appeal, or, if a recommendation from the Council is requested, within 45 days of receiving the Council's recommendation. The Regional Director's decision is the final administrative decision of the Department of Commerce as of the date of the decision.

#### § 663.43 Permit sanctions.

Limited entry permits issued or applied for under this subpart C are subject to sanctions pursuant to the Magnuson Act at 16 U.S.C. 1858(g) and 15 CFR part 904, subpart D.

4. The appendix to part 663 is amended as follows:

a. Under the index, the entry for I.I.E. is revised;

b. Under paragraph I.I.E., the existing text is redesignated paragraph I.I.E.(a), a new heading for newly redesignated paragraph I.I.E.(a) is added, and new paragraphs I.I.E.(b), I.I.E.(c), and I.I.E.(d) are added; and

c. Under paragraph III.B., the first paragraph of the introductory text is revised, to read as follows:

#### Appendix to Part 663—Groundfish Management Procedures

##### Index

##### II. \* \* \*

E. Guidelines for Determining the Numerical Specification of a Harvest Guideline or Quota; Allocation Between Limited Entry and Open Access Fisheries.

(a) Numerical Specification of a Harvest Guideline or Quota.

(b) Treaty Indian Fisheries.

(c) Recreational Fisheries.

(d) Allocation Between Limited Entry and Open Access Fisheries.

(1) Allocation procedures.

(2) Limited entry allocation.

(3) Open access allocation.

(4) Open access allocation percentage.

##### II. \* \* \*

E. Guidelines for Determining the Numerical Specification of a Harvest Guideline or Quota; Allocation Between Limited Entry and Open Access Fisheries.

(a) *Numerical Specification of a Harvest Guideline or Quota.* \* \* \*

(b) *Treaty Indian Fisheries.* Certain amounts of groundfish may be set aside annually for tribal fisheries prior to dividing the balance of the allowable catch between the commercial limited entry and open access fisheries.

(c) *Recreational Fisheries.* Any specific allocation to the recreational fishery will be set aside annually prior to dividing the commercial allocation between the limited entry and the open access fisheries.

(d) *Allocation Between Limited Entry and Open Access Fisheries.*

(1) *Allocation procedures.* Separate allocations for the limited entry and open access fisheries will be established for each fishing year, beginning with the 1994 fishing year, for certain species and/or areas using the procedures described in § 663.21 and sections I.I.E. and H. of this appendix. The Council will also develop recommendations for allocations for the commercial limited entry and open access fisheries for certain separate species and/or for which the Council determines allocations are necessary.

(2) *Limited entry allocation.* The allocation for the limited entry fishery is the allowable catch (harvest guideline or quota excluding set asides under sections I.I.E. (b) and (c) of this appendix) minus the allocation to the open access fishery.

(3) *Open access allocation.* The allocation for the open access fishery is derived by applying the open access allocation percentage to the annual harvest guideline or quota after subtracting any set asides under sections I.I.E. (b) and (c) of this appendix. For management subareas where quotas or harvest guidelines for a stock are not fully utilized, no separate allocation will be established for the open access fishery until it is projected that the allowable catch for a species will be reached.

(4) *Open access allocation percentage.* (i) For each species with a harvest guideline or quota, the initial open access allocation percentage is calculated by:

(A) Computing the total catch for that species during the window period by

(1) longlines and traps (or pots) not initially receiving a limited entry endorsement for that gear; and

(2) Exempted gear; and

(B) Dividing that amount by the total catch during the window period by all gear.

(ii) The following guidelines apply to recalculation of the open access allocation



percentage. Any recalculated allocation percentage will be used in calculating the following year's open access allocation:

(A) *Adjustment to decrease.* If a gear type is prohibited by a state or the Secretary and a vessel thereby qualifies for a limited entry permit under § 663.35(a)(5); or if a small limited entry fleet is incorporated into the limited entry fishery under § 663.34(a)(3), the window-period catch of these vessels will be deducted from the open access fishery's historical catch levels and the open access allocation percentage recalculated accordingly.

(B) *Adjustment to increase.* The window-period catch of a vessel with a "B" gear endorsement for longline or trap (or pot) gear will count toward the open access allocation percentage after its "B" endorsement expires. The historic catch level of a vessel with a "B" gear endorsement for trawl gear will continue to count toward the limited entry fishery allocation after the "B" endorsement expires.

### III. \* \* \*

\* \* \* \* \*

### B. \* \* \*

Management measures are normally imposed, adjusted, or removed at the

beginning of the fishing year, but may, if the Council determines it necessary, be imposed, adjusted or removed at any time during the year. Management measures may be imposed for resource conservation, social or economic reasons consistent with the criteria, procedures, goals, and objectives set forth in Amendment 4. Management measures for the open access fishery will be set consistent with the objectives set out in Amendment 6 at 14.2.2.6.

\* \* \* \* \*

[FR Doc. 92-27718 Filed 11-13-92; 8:45 am]

BILLING CODE 3510-22-M



# Proposed Rules

Federal Register

Vol. 57, No. 221

Monday, November 16, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Packers and Stockyards Administration

#### 9 CFR Part 201 and 203

#### Review of Existing Regulations and Statements of General Policy

**AGENCY:** Packers and Stockyards Administration, USDA.

**ACTION:** Request for comments; extension of comment period.

**SUMMARY:** On September 15, 1992, a notice requesting public comments regarding the Agency's review of regulations and statements of general policy was published in the *Federal Register* (57 FR 42515). Comments are being sought concerning the relevance and importance of each regulation and statement of general policy to today's livestock, meat, and poultry industries.

The notice published in the *Federal Register* on September 15 requires comments to be filed with the Administration on or before November 16, 1992. Pursuant to requests from interested parties for additional time to prepare their comments, the time for filing is being extended 30 days.

**DATES:** The time for filing comments is hereby extended to and includes December 16, 1992.

**ADDRESSES:** Comments may be mailed to the Administrator, Packers and Stockyards Administration, room 3039, South Building, U.S. Department of Agriculture, Washington, DC 20250.

Comments received may be inspected during normal business hours in the Office of the Administrator.

**FOR FURTHER INFORMATION CONTACT:** Harold W. Davis, Director, Livestock Marketing Division (202) 720-6951, or Kenneth Stricklin, Director, Packer and Poultry Division (202) 720-7363.

Done at Washington, DC this 10th day of November 1992.

Virgil M. Rosendale,

Administrator, Packers and Stockyards Administration.

[FR Doc. 92-27693 Filed 11-13-92; 8:45 am]

BILLING CODE 3410-KD-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 91-NM-23-AD]

#### Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Supplemental notice of proposed rulemaking; reopening of comment period.

**SUMMARY:** This document revises an earlier proposed airworthiness directive (AD), applicable to Airbus Industrie Model A300 series airplanes, that would have required the implementation of a corrosion prevention and control program. That proposal was prompted by reports of recent incidents involving corrosion and fatigue cracking in transport category airplanes that are approaching or have exceeded their economic design goal; these incidents have jeopardized the airworthiness of the affected airplanes. This action revises the proposed rule by including an optional procedure that would require the accomplishment of specific inspection procedures, rather than a maintenance program change. The actions specified by this proposed AD are intended to prevent degradation of the structural capabilities of the affected airplanes due to the problems associated with corrosion.

**DATES:** Comments must be received by December 31, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-23-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Greg Holt, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2140; fax (206) 227-1320.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-23-AD." The postcard will be date stamped and returned to the commenter.

#### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-23-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.



*Discussion:* A proposal to amend part 39 of the Federal Aviation Regulations to add an airworthiness directive (AD), applicable to all Airbus Model A300 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the Federal Register on March 21, 1991 (56 FR 11966). That NPRM would have required that operators revise their FAA-approved maintenance programs to include a corrosion prevention and control program as specified in Airbus Industrie Document, "A300 Corrosion Prevention and Control Program (CPCP)," dated August 1990. That NPRM was prompted by reports of incidents involving fatigue cracking and corrosion in transport category airplanes that have jeopardized the airworthiness of the affected airplanes. That condition, if not corrected, could degrade the structural capabilities of the affected airplanes.

Since the issuance of that NPRM, the FAA has reconsidered the specific approach it previously had taken in addressing the identified unsafe condition. The FAA has become aware of certain factors that necessitate providing an alternative to what was proposed:

While the vast majority of affected U.S.-registered airplanes are operated under FAA-approved maintenance/inspection programs, there are some airplanes that are not so operated, namely, certain airplanes that are excepted from the requirements of the Federal Aviation Regulations (FAR) Part 125 by Section 125.1. Because the applicability of the rule would include all Model A300 series airplanes, those "excepted" airplanes would still be subject to the AD's requirements; however, because they are not operated under an FAA-approved maintenance/inspection program, their operators would not have been able to comply with the AD as originally proposed. Under these circumstances, operators of these airplanes would have been required to obtain approval of an alternative method of compliance that would enable them to comply with the proposed AD by accomplishing the specified corrosion instructions.

In order to address this issue, the FAA has revised the proposal specifically to provide an alternative for compliance by accomplishment of the corrosion instructions specified in the referenced Aerospace document (hereafter referred to as "the Document"). The optional procedure of revising the maintenance program would remain available, however, to all operators operating under such programs.

Additionally, in implementing the approach that was proposed in the originally issued notice, the FAA now

considers that there may be inherent in it unnecessary administrative burdens on affected operators, and inflexibility in the ability of operators to administer and fulfill the purpose of the program, which is to prevent unsafe levels of corrosion. The reasons prompting this reconsideration, as well as other changes in the proposed rule, are discussed below.

#### *General Changes to the Proposal*

The original notice proposed to require a change in operators' FAA-approved maintenance/inspection programs and to require submission of reports to the FAA's Standardization Branch (in the Transport Airplane Directorate), to ensure that changes were being implemented to the program in a way that fulfilled the objective of the AD, i.e., to maintain the airplane fleet at an acceptable level of corrosion (defined as Level 1). As explained previously, the FAA now considers it more appropriate, in some cases, to implement the program described in the Document by specific inspection requirements, rather than by mandating a program change; and to permit operators to avoid unnecessary recordkeeping requirements by allowing them the option of adopting a maintenance program change with the approval of the FAA.

The roles of the Principal Maintenance Inspector (PMI) and the Manager of Standardization Branch have been revised with regard to the requirements of the proposed AD that are applicable to those operators having FAA-approved maintenance programs. Based on a review of general comments received in response to other similar rulemaking on this subject (concerning other models of airplanes) and internal discussions, the FAA now has determined that, for those affected operators, it is more appropriate for the PMI to serve as the primary point of FAA oversight for the actions regarding this proposed AD. Because the proposed corrosion prevention and control program is so integral to the maintenance/inspection programs of operators, and because the PMI normally has oversight for those maintenance/inspection programs, the FAA considers it appropriate to designate the PMI as the prime liaison for the mandated corrosion program as well. Doing so will eliminate any possibility of duplication of effort that otherwise could have occurred on the part of the PMI and the Manager of the Standardization Branch.

Therefore, the new proposal (this supplemental notice) now would provide for the approval of certain

revisions to the corrosion instruction repetitive inspection intervals and recordkeeping methods to be made by the PMI rather than the Manager of the Standardization Branch. The supplemental notice also would require that reports of determinations of Level 3 corrosion be submitted to the PMI rather than to the Manager of the Standardization Branch. These revisions to the proposal would permit the PMI's to continue to serve as the FAA's critical link with the operators; their oversight responsibilities in this AD, as in other AD's, will not be minimized by the requirements of this AD.

The PMI will coordinate closely with the Standardization Branch when engineering issues arise. As a tool to define the responsibilities of the PMI's and to define the relationship between the PMI and the Standardization Branch specifically with regard to this AD, the FAA is developing detailed internal guidance for the PMI's to consider when approving corrosion prevention and control programs and related actions as being in compliance with this proposed AD. (When completed, a copy of this guidance material will be placed in the Rules Docket related to this AD action.)

Information has been added to this supplemental notice (by means of a "Note") to specify the cognizant FAA official (or office) who is responsible for the approval of inspection schedules and revisions to such schedules submitted by different operators, and to whom various reports must be submitted. The term "the FAA" has been substituted throughout this supplemental notice where previously references were made to specific FAA officials/offices. However, this term is defined differently for different operators, as follows:

1. For those operators who comply with the rule by accomplishing the corrosion instructions specified in the referenced Document (the task-by-task approach), "the FAA" is defined as "the Manager of the Standardization Branch, ANM-113, FAA, Transport Airplane Directorate."

2. For those operators operating under FAR part 121 or 129 who comply with the rule by revising their maintenance/inspection program, "the FAA" is defined as "the cognizant Principal Maintenance Inspector (PMI)."

3. For those operators operating under FAR Part 91 or Part 125 who comply with the rule by revising their maintenance/inspection program, "the FAA" is defined as "the cognizant Maintenance Inspector at the appropriate FAA Flight Standards office."



### *Specific Provisions of the Supplemental Notice*

Paragraph (a) of the supplemental notice has been revised to set forth the compliance times for the initial "corrosion instruction" of each corrosion inspection area. These compliance times are extracted from the Document. In order to be consistent with what was originally proposed, the compliance times specified in paragraph (a) are measured from a date one year after the effective date of the final rule. Generally, operators would be required to complete the initial corrosion instruction before reaching the "implementation age (IA)" plus one "repeat interval (RI)" for the area, as detailed in the Document. The corrosion instruction would be required to be repeated at a time interval not to exceed the RI for that area, as detailed in the Document.

Paragraph (a) of the supplemental notice includes paragraph (a)(1)(iv), which states that performance of the initial tasks by each operator must occur at a minimum rate equivalent to one airplane per year (beginning one year after the effective date of the AD). While this provision is also consistent with the Document, the FAA recognizes that this may cause an undue hardship on some small operators. In those circumstances, the FAA anticipates evaluating requests for adjustment to the implementation rate on a case-by-case basis under the provisions of paragraph (h) of the proposed rule. At note to this effect has been added to the supplemental notice.

Paragraph A. of the original notice contained a "Note" to inform the public that all structure found corroded or cracked was required to be addressed in accordance with FAR part 43, Section 43.13, which is the relevant provision of part 43, requires that:

"... persons performing maintenance, alteration, or preventive maintenance on an aircraft, engine, propeller, or appliance shall use methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness prepared by its manufacturer, or other methods, techniques, and practices acceptable to the Administrator."

Since issuance of the original notice, the FAA has reconsidered this item and has determined that more specific and useful guidance as to the necessary action to be taken is set forth in the Document itself, within the definition of a "corrosion instruction." Therefore, this note has been revised to reference this portion (Section 5) of the Document and to emphasize the importance of these

corrective actions. The new note explains that a "corrosion instruction" is defined in the Document as including not only the pertinent inspection, but any necessary repairs, application of corrosion inhibitors, and other follow-on procedures, as well.

Paragraph (b) of the supplemental notice provides an optional method of complying with the proposed rule. In lieu of performing the task-by-task requirements proposed in paragraph (a), operators may revise their FAA-approved maintenance/inspection programs to include the corrosion prevention and control program defined in the Document, or an equivalent program approved by the FAA.

In response to questions previously raised concerning recordkeeping and record retention requirements as they relate to the programmatic approach originally proposed [and retained in paragraph (b) of this supplemental notice], the FAA offers the following:

Sections 91.417(a)(2)(v) and 121.380(a)(2)(v) of the FAR require that a record be made of the current status of applicable AD's. With regard to proposed paragraph (b), such a record would be required to be made when the maintenance/inspection program is revised to incorporate the program specified in the Document; at that time, paragraph (b) of the AD would be fully complied with. Regarding paragraphs (d) through (g) of this supplemental notice, those paragraphs would impose separate requirements; therefore, except as discussed below, separate entries would have to be made to reflect compliance with each of those paragraphs.

Section 121.380(a)(2)(iv) of the FAR concerns recording "the identification of the current inspection status of the aircraft." Section 91.417(a)(2)(iv) contains a similar requirement. Because proposed paragraph (b) would require operators to revise their maintenance/inspection program to include the program specified in the Document, each operator's program would be required to identify each inspection (e.g., "C" check) at which each corrosion instruction specified in the Document will be performed on each airplane. By recording the current inspection status of each airplane, and by maintaining a cross-reference system between these records and the maintenance/inspection program revision, it will be possible to determine the current status of each corrosion instruction on each airplane. Once this cross-reference system has been established, this recording provision of sections 91 and 121 requires no additional recording beyond what would otherwise be required normally.

Section 121.380(a)(1) concerns "records necessary to show that all requirements for the issuance of an airworthiness release under Section 121.709 have been met." Section 91.417(a)(1) contains a similar requirement. These are also referred to as "dirty fingerprint records." This provision of sections 91 and 121 requires most of the recording that would result from this proposed AD. Each time a corrosion instruction is performed, the operator would be required to make a "dirty fingerprint" record of the task, identifying what actions were accomplished. It should be noted, however, that these records are not different from the records made for any other actions taken under the operator's maintenance/inspection program.

In addition to the record making requirements, discussed above, sections 91 and 121 of the FAR impose requirements for record retention:

Section 121.380(b)(1) and section 91.417(b)(1) require that the "dirty fingerprint" records be retained until the work is repeated or superseded by other work, or for one year after the work is performed. Therefore, most of the records resulting from this proposed AD would not have to be retained indefinitely. However, such retention might facilitate subsequent transfers, or substantiate requests for repetitive interval escalations, and therefore, may be in the operator's interest.

Section 121.380(b)(2) requires that the records specified in paragraph 121.380(a)(2) (current status of AD's and current inspection status) be retained and transferred with the airplane at the time it is sold. Section 91.417(b)(2) contains a similar requirement.

These recording requirements are not considered to be unduly burdensome and are considered the minimum necessary to enable the cognizant FAA Maintenance Inspector to perform proper surveillance and to ensure that the objectives of the proposed rule are being fulfilled.

However, because of the numerous concerns expressed by operators regarding the recordkeeping obligations imposed by section 121.380 with regard to similar rulemaking on this subject, the FAA has included in the supplemental notice certain provisions for alternative recordkeeping methods. Proposed paragraph (b)(1) would provide for the development and implementation of such alternative methods, which must be approved by the FAA. For example, operators may choose to submit proposals to record compliance with paragraphs (d) through (g) of the AD by a means other than they normally use to



record AD status. (As discussed previously, the FAA is currently developing guidance material that will contain information to be considered by PMIs when reviewing proposals for alternative recordkeeping methods.)

Paragraph (c) of the supplemental notice provides for increasing a repetitive inspection interval by up to 10% in order to accommodate unanticipated scheduling requirements. Operators would be required to inform the FAA within 30 days of such increases.

Paragraph (d)(1) of the supplemental notice sets forth the reporting actions that are necessary to be accomplished when Level 3 corrosion is found. A similar requirement was proposed in the originally issued notice; however, upon reconsideration, the FAA finds that the original notice was ambiguous as to which corrosion findings operators were required to report. This particular requirement has been changed to clarify that it is upon the "determination" of Level 3 corrosion (not merely the "finding" of it) that the operator must notify the FAA. Within 7 days after such a determination is made, an operator would be required to accomplish one of the following actions:

1. submit a report of the determination to the FAA and complete the corrosion instruction in the affected area on the remainder of the Model A300 series airplanes in the operator's fleet; or
2. submit a proposed schedule, for approval by the FAA, for performing the corrosion instructions in the affected area on the remainder of the operator's Model A300 series fleet; or
3. submit data substantiating that the Level 3 corrosion was an isolated occurrence.

Once the FAA has received such a report, if appropriate, it may, in conjunction with normal surveillance activities, request additional information regarding the results of the corrosion instructions performed on the remainder of the operator's Model A300 series fleet.

Paragraph (d)(2) of the supplemental notice specifies that the FAA may impose schedules different from what an operator has proposed under paragraph (d)(1), if it is found that changes are necessary to ensure that any other Level 3 corrosion in the operator's Model A300 series fleet is detected in a timely manner.

Paragraph (d)(3) of the supplemental notice would require that, within the time schedule approved by the FAA, the operator must accomplish the corrosion instructions in the affected areas on the remaining airplanes in its Model A300

series fleet to ensure that any other Level 3 corrosion is detected.

Paragraph (e) would require that an operator, upon finding corrosion exceeding Level 1 during a repetitive inspection, adjust its program to ensure that future corrosion findings are limited to Level 1 or better. Where corrective action is necessary to reduce corrosion to Level 1 or better, an operator must submit a proposal for a means of corrective action for the FAA's approval within 60 days after the determination of corrosion is made. That means, approved by the FAA, must then be implemented to reduce future findings of corrosion in that area to Level 1 or better.

With regard to paragraph (e), it should be noted that, if corrosion found is not considered representative of an operator's fleet, no further corrective action may be necessary, since a means to reduce any corrosion to Level 1 or better will have already been implemented in the operator's program in accordance with proposed paragraph (a) or (b). For example, if a finding of corrosion is attributable to a particular spill of mercury or other unique event, or if corrosion is found on an airplane recently acquired from another operator, the means specified in the existing program may be adequate for controlling corrosion in the remainder of the operator's fleet. Similarly, if an operator has already implemented means to reduce corrosion in an area based on previous findings, no additional corrective action may be necessary. In reviewing the reports submitted in accordance with the AD, the FAA will monitor the effectiveness of the operator's means to reduce corrosion. If the FAA determines that an operator has failed to implement adequate means to reduce corrosion to Level 1 or better, appropriate action will be taken to ensure compliance with this paragraph.

Paragraph (f) of the supplemental notice is similar to paragraph F. of the original notice in that it concerns adding airplanes to an operator's fleet, and the procedures that must be followed with regard to corrosion prevention and control. However, the applicability of paragraph (f) of the supplemental notice has been expanded to include not only air carrier operators, but all operators. The FAA has determined that the need to ensure that corrosion is prevented and controlled is equal for all Model A300 series airplanes, whether they are newly acquired by air carrier operators or other types of operators.

Additionally, proposed paragraph (f) differentiates between procedures applicable to added airplanes that previously were maintained in

accordance with this AD and those that were not so maintained. For airplanes that previously have been maintained in accordance with the proposed requirements of this AD action, the first corrosion instruction in each area to be performed by the new operator would be required to be performed in accordance with either the previous operator's or the new operator's inspection schedule, whichever would result in the earlier accomplishment date for that task. For airplanes that have not been maintained in accordance with the proposed requirements of this AD action, the first corrosion instruction in each area to be performed by the new operator would be required to be performed before the airplane is placed in service, or in accordance with a schedule approved by the FAA.

With regard to the requirements of paragraph (f), the FAA considers it essential that operators ensure that transferred airplanes are inspected in accordance with the baseline corrosion prevention and control program on the same basis as if there were continuity in ownership. Scheduling of the inspections for each airplane must not be delayed or postponed due to a transfer of ownership; in some cases, such postponement could continue indefinitely if an airplane is transferred frequently from one owner to another. The supplemental notice has been clarified to state that the specified procedures would be required to be accomplished before any operator places into service any airplane subject to the requirements of the proposed rule.

Paragraph (g) of the supplemental notice would require that reports of Level 2 and Level 3 corrosion be submitted at least quarterly to Airbus. A note has been added to this paragraph indicating that the reporting of Level 2 and Level 3 corrosion found as a result of any opportunity inspections is highly desirable. Operators are not relieved, however, from reporting corrosion findings as required by FAR section 121.703.

#### *Other Changes to the Proposed Rule*

The following changes have been made in the supplemental notice for the purpose of clarification:

1. The word "task" has been changed to "corrosion instruction" throughout the supplemental notice in order to maintain terms parallel to those used in the Document.

2. Paragraph (d) of the supplemental notice (previously designated as paragraph B. in the original notice) has been revised to clarify that a change to the operator's FAA-approved



maintenance program is not necessary when that operator initiates a fleet campaign.

3. Paragraph (g) of the supplemental notice (previously designated as paragraph D. in the original notice) has been clarified to reference the reporting procedures specified in Section 6 of the Document as appropriate reporting procedures, and is meant to be a separate reporting requirement from that of paragraph (d)(1)(i).

4. Paragraph (h) of the supplemental notice has been revised to specify the current procedure for submitting requests for approval of alternative methods of compliance.

5. The format of the supplemental notice has been restructured to be consistent with the standard Federal Register style.

6. The economic analysis information below has been revised to increase the specified hourly labor rate from \$40 per manhour (as was cited in the preamble to the original notice) to \$55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

Since the changes discussed above address a number of issues that were not specifically addressed in the originally proposed rule, the comment period has been reopened for 45 days to solicit comments from the public on these changes.

It is estimated that 54 airplanes of U.S. registry would be affected by this AD. There are 50 corrosion inspection areas called out in the Airbus Industrie Document, and it would take approximately 16 work hours per area to accomplish the required actions. At an average labor cost of \$55 per work hour, the total cost to inspect each airplane would be approximately \$44,000. Based on these figures, the total cost impact of the AD on U.S. operators for the initial 6-year inspection cycle is \$2,376,000. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1)

is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

##### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Airbus:** Docket 91-NM-23-AD.

**Applicability:** All Model A300 series airplanes, certificated in any category.

**Compliance:** Required as indicated, unless accomplished previously.

**Note 1.**—This AD references Airbus Industrie Document, "A300 Corrosion Prevention and Control Program," dated August 1990, for corrosion instructions, compliance times, and reporting requirements. In addition, this AD specifies inspection and reporting requirements beyond those included in that Document. Where there are differences between the AD and the Document, the AD prevails.

**Note 2.**—As used throughout this AD, the term "the FAA" is defined differently for different operators, as follows: For those operators complying with paragraph (a) of this AD, "the FAA" is defined as "the Manager of the Standardization Branch, ANM-113, FAA, Transport Airplane Directorate." For those operators operating under Federal Aviation Regulation (FAR) Part 121 or 129, and complying with paragraph (b) of this AD, "the FAA" is defined as "the cognizant Principal Maintenance Inspector (PMI)." For those operators operating under FAR Part 91 or 125, and complying with paragraph (b) of this AD, "the FAA" is defined as "the cognizant Maintenance Inspector at the appropriate FAA Flight Standards office."

To prevent degradation of the structural capabilities of the airplane due to the problems associated with corrosion damage, accomplish the following:

(a) Except as provided in paragraph (b) of this AD, complete each of the corrosion instructions specified in Section 5 of Airbus Industrie Document, "A300 Corrosion Prevention and Control Program," dated August 1990 (hereinafter referred to as "the Document"), in accordance with the procedures of the Document, and the schedule specified in paragraphs (a)(1) and (a)(2) of this AD.

**Note 3.**—A "corrosion instruction," as defined in Section 5 of the Document, includes inspections; procedures for a corrective action, including repairs, under identified circumstances; application of corrosion inhibitors; and other follow-on actions.

**Note 4.**—Corrosion instructions completed in accordance with the Document before the effective date of this AD may be credited for compliance with the initial corrosion instruction requirements of paragraph (a)(1) of this AD.

**Note 5.**—Where non-destructive inspection (NDI) methods are employed, in accordance with Section 5 of the Document, the standards and procedures used must be acceptable to the Administrator in accordance with FAR Section 43.13.

**Note 6.**—Procedures identified in the Document as "informational only" are not required to be accomplished by this AD.

(1) Complete the initial corrosion instruction of each "corrosion inspection area" defined in Section 5 of the Document as follows:

(i) For aircraft areas that have not yet reached the "implementation age" (IA) as of one year after the effective date of this AD, initial compliance must occur no later than the IA plus the "repeat interval" (RI).

(ii) For aircraft areas that have exceeded the IA as of one year after the effective date of this AD, initial compliance must occur within the RI for the area, measured from a date one year after the effective date of this AD.

(iii) For airplanes that are 20 years old or older as of one year after the effective date of this AD, initial compliance must occur for all areas within one RI, or within six years, measured from a date one year after the effective date of this AD, whichever occurs first.

(iv) In all cases, accomplishment of the initial tasks by each operator must occur at a minimum rate equivalent to one airplane per year, beginning one year after the effective date of this AD.

**Note 7.**—This minimum rate requirement may cause a hardship on some small operators. In those circumstances, requests for adjustments to the implementation rate will be evaluated on a case-by-case basis under the provisions of paragraph (h) of this AD.

(2) Repeat each corrosion instruction at a time interval not to exceed the RI specified in the Document for that task.



(b) As an alternative to the requirements of paragraph (a) of this AD: Prior to one year after the effective date of this AD, revise the FAA-approved maintenance/inspection program to include the corrosion prevention and control program specified in the Document; or to include an equivalent program that is approved by the FAA. In all cases, the initial corrosion instruction for each corrosion inspection area must be completed in accordance with the compliance schedule specified in paragraph (a)(1) of this AD.

(1) Any operator complying with paragraph (b) of this AD may use an alternative recordkeeping method to that otherwise required by FAR Section 91.417 or Section 121.380 for the actions required by this AD, provided it is approved by the FAA and is included in a revision to the FAA-approved maintenance/inspection program.

(2) Subsequent to the accomplishment of the initial corrosion instruction, extensions of RI's specified in the Document must be approved by the FAA.

(c) To accommodate unanticipated scheduling requirements, it is acceptable for an RI to be increased by up to 10%, but not to exceed 6 months. The FAA must be informed, in writing, of any such extension within 30 days after such adjustment of the schedule.

(d)(1) If, as a result of any inspection conducted in accordance with paragraphs (a) or (b) of this AD, Level 3 corrosion is determined to exist in any area, accomplish either paragraph (d)(1)(i) or (d)(1)(ii) within 7 days after such determination:

(i) Submit a report of that determination to the FAA and complete the corrosion instruction in the affected areas on all Model A300 series airplanes in the operator's fleet; or

(ii) Submit to the FAA for approval one of the following:

(A) A proposed schedule for performing the corrosion instructions in the affected areas on the remaining Model A300 series airplanes in the operator's fleet, which is adequate to ensure that any other Level 3 corrosion is detected in a timely manner, along with substantiating data for that schedule; or

(B) Data substantiating that the Level 3 corrosion found is an isolated occurrence.

**Note 8.**—Notwithstanding the provisions of Section 2 of the Document, which would permit corrosion that otherwise meets the definition of Level 3 corrosion (i.e., which is determined to be a potentially urgent airworthiness concern requiring expeditious action) to be treated as Level 1 if the operator finds that it, "can be attributed to an event not typical of the operator's usage of other airplanes in the same fleet," this paragraph requires that data substantiating any such finding be submitted to the FAA for approval.

(2) The FAA may impose schedules other than those proposed, upon finding that such changes are necessary to ensure that any other Level 3 corrosion is detected in a timely manner.

(3) Within the time schedule approved under paragraph (d)(1) or (d)(2) of this AD, accomplish the corrosion instructions in the affected areas of the remaining Model A300 series airplanes in the operator's fleet.

(e) If, as a result of any inspection after the initial inspection conducted in accordance

with paragraphs (a) or (b) of this AD, it is determined that corrosion findings exceed Level 1 in any area, within 60 days after such determination a means approved by the FAA must be implemented to reduce future findings of corrosion in that area to Level 1 or better.

(f) Before any operator places into service any airplane subject to the requirements of this AD, a schedule for the accomplishment of corrosion instructions required by this AD must be established in accordance with paragraph (f)(1) or (f)(2) of this AD, as applicable:

(1) For airplanes previously maintained in accordance with this AD, the first corrosion instruction in each area to be performed by the new operator must be accomplished in accordance with the previous operator's schedule or with the new operator's schedule, whichever would result in the earlier accomplishment date for that task. After each corrosion instruction has been performed once, each subsequent task must be performed in accordance with the new operator's schedule.

(2) For airplanes that have not been previously maintained in accordance with this AD, the first corrosion instruction for each area to be performed by the new operator must be accomplished prior to further flight or in accordance with a schedule approved by the FAA.

(g) Reports of Level 2 and Level 3 corrosion must be submitted at least quarterly to Airbus in accordance with Section 6 of the Document.

**Note 9.**—Reporting of Level 2 and Level 3 corrosion found as a result of any opportunity inspections is highly desirable.

(h) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through the cognizant Maintenance Inspector at the appropriate FAA Flight Standards office, who may concur or comment and then send it to the Manager, Los Angeles ACO.

**Note 10.**—Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(i) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(j) Reports of corrosion inspection results required by this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120-0056.

Issued in Renton, Washington, on November 9, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-27644 Filed 11-13-92; 8:45 am]

BILLING CODE 4910-13-M

## 14 CFR Part 39

[Docket No. 91-NM-24-AD]

### Airworthiness Directives; British Aerospace Model BAC 1-11 200 and 400 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Supplemental notice of proposed rulemaking; reopening of comment period.

**SUMMARY:** This document revises an earlier proposed airworthiness directive (AD), applicable to British Aerospace Model BAC 1-11 200 and 400 series airplanes, that would have required the implementation of a corrosion prevention and control program. That proposal was prompted by reports of recent incidents involving corrosion and fatigue cracking in transport category airplanes that are approaching or have exceeded their economic design goal; these incidents have jeopardized the airworthiness of the affected airplanes. This action revises the proposed rule by including an optional procedure that would require the accomplishment of specific inspection procedures, rather than a maintenance program change. The actions specified by this proposed AD are intended to prevent degradation of the structural capabilities of the affected airplanes due to the problems associated with corrosion.

**DATES:** Comments must be received by December 31, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-24-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

#### FOR FURTHER INFORMATION CONTACT:

Mr. William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.



**SUPPLEMENTARY INFORMATION.****Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-24-AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-24-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

**Discussion:** A proposal to amend part 39 of the Federal Aviation Regulations to add an airworthiness directive (AD), applicable to all British Aerospace Model BAC 1-11 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the *Federal Register* on March 21, 1991 (56 FR 11983). That NPRM would have required that operators revise their FAA-approved maintenance programs to include a corrosion prevention and control program as specified in British Aerospace Alert Service Bulletin 5-A-PM5987, "Time Limits—Aircraft General—Corrosion Control Programme," Issue 1, dated November 30, 1990. That NPRM was prompted by reports of incidents involving fatigue cracking and corrosion in transport category airplanes that have jeopardized the airworthiness of the affected airplanes. That condition, if not

corrected, could degrade the structural capabilities of the affected airplanes.

Since the issuance of the notice, the FAA has reconsidered the specific approach it previously had taken in addressing the identified unsafe condition. The FAA has become aware of certain factors that necessitate providing an alternative to what was proposed:

While the vast majority of affected U.S.-registered airplanes are operated under FAA-approved maintenance/inspection programs, there are some airplanes that are not so operated, namely, certain airplanes that are excepted from the requirements of the Federal Aviation Regulations (FAR) part 125 by section 125.1. Because the applicability of the rule would include all Model BAC 1-11 series airplanes, those "excepted" airplanes would still be subject to the AD's requirements; however, because they are not operated under an FAA-approved maintenance/inspection program, their operators would not have been able to comply with the AD as originally proposed. Under these circumstances, operators of these airplanes would have been required to obtain approval of an alternative method of compliance that would enable them to comply with the proposed AD by accomplishing the specified corrosion tasks.

In order to address this issue, the FAA has revised the proposal specifically to provide an alternative for compliance by accomplishment of the corrosion tasks specified in the referenced British Aerospace alert service bulletin. The optional procedure of revising the maintenance program would remain available, however, to all operators operating under such programs.

Additionally, in implementing the approach that was proposed in the originally issued notice, the FAA now considers that there may be inherent in it unnecessary administrative burdens on affected operators, and inflexibility in the ability of operators to administer and fulfill the purpose of the program, which is to prevent unsafe levels of corrosion. The reasons prompting this reconsideration, as well as other changes in the proposed rule, are discussed below.

**General Changes to the Proposal**

Since issuance of the notice, British Aerospace has issued Revision 2 of Alert Service Bulletin 5-A-PM5987, dated June 30, 1992 (hereafter referred to as "the Service Bulletin"). This revision differs from the version referenced in the notice in that it includes detailed corrections to appendix 3 (these corrections contain certain additional

inspections beyond what was specified in the previous version); and it updates appendix 4 to include additional data concerning the secondary protection fluid specifications for temporary protection of aircraft structure. The new proposal (this supplemental notice) has been revised to cite Revision 2 of the Service Bulletin as the appropriate source for service information.

The original notice proposed to require a change in operators' FAA-approved maintenance/inspection programs and to require submission of reports to the FAA's Standardization Branch (in the Transport Airplane Directorate), to ensure that changes were being implemented to the program in a way that fulfilled the objective of the AD, i.e., to maintain the airplane fleet at an acceptable level of corrosion (defined as Level 1). As explained previously, the FAA now considers it more appropriate, in some cases, to implement the program described in the Service Bulletin by specific inspection requirements, rather than by mandating a program change; and to permit operators to avoid unnecessary recordkeeping requirements by allowing them the option of adopting a maintenance program change with the approval of the FAA.

The roles of the Principal Maintenance Inspector (PMI) and the Manager of Standardization Branch have been revised with regard to the requirements of the proposed AD that are applicable to those operators having FAA-approved maintenance programs. Based on a review of general comments received in response to other similar rulemaking on this subject (concerning other models of airplanes) and internal discussions, the FAA now has determined that, for those affected operators, it is more appropriate for the PMI to serve as the primary point of FAA oversight for the actions regarding this proposed AD. Because the proposed corrosion prevention and control program is so integral to the maintenance/inspection programs of operators, and because the PMI normally has oversight for those maintenance/inspection programs, the FAA considers it appropriate to designate the PMI as the prime liaison for the mandated corrosion program as well. Doing so will eliminate any possibility of duplication of effort that otherwise could have occurred on the part of the PMI and the Manager of the Standardization Branch.

Therefore, this supplemental notice now would provide for the approval of certain revisions to the corrosion task repetitive inspection intervals and



recordkeeping methods to be made by the PMI rather than the Manager of the Standardization Branch. The supplemental notice also would require that reports of determinations of Level 3 corrosion be submitted to the PMI rather than to the Manager of the Standardization Branch. These revisions to the proposal would permit the PMI's to continue to serve as the FAA's critical link with the operators; their oversight responsibilities in this AD, as in other AD's, will not be minimized by the requirements of this AD.

The PMI will coordinate closely with the Standardization Branch when engineering issues arise. As a tool to define the responsibilities of the PMI's and to define the relationship between the PMI and the Standardization Branch specifically with regard to this AD, the FAA is developing detailed internal guidance for the PMI's to consider when approving corrosion prevention and control programs and related actions as being in compliance with this proposed AD. (When completed, a copy of this guidance material will be placed in the Rules Docket related to this AD action.)

Information has been added to this supplemental notice (by means of a "Note") to specify the cognizant FAA official (or office) who is responsible for the approval of inspection schedules and revisions to such schedules submitted by different operators, and to whom various reports must be submitted. The term "the FAA" has been substituted throughout this supplemental notice where previously references were made to specific FAA officials/offices. However, this term is defined differently for different operators, as follows:

1. For those operators who comply with the rule by accomplishing the corrosion tasks specified in the referenced Service Bulletin (the task-by-task approach), "the FAA" is defined as "the Manager of the Standardization Branch, ANM-113, FAA, Transport Airplane Directorate."

2. For those operators operating under FAR Part 121 or 129 who comply with the rule by revising their maintenance/inspection program, "the FAA" is defined as "the cognizant Principal Maintenance Inspector (PMI)."

3. For those operators operating under FAR part 91 or part 125 who comply with the rule by revising their maintenance/inspection program, "the FAA" is defined as "the cognizant Maintenance Inspector at the appropriate FAA Flight Standards office."

#### *Specific Provisions of the Supplemental Notice*

Paragraph (a) of the supplemental notice has been revised to set forth the compliance times for the initial "corrosion task" of each corrosion inspection area. These compliance times are extracted from the Service Bulletin. In order to be consistent with what was originally proposed, the compliance times specified in paragraph (a) are measured from a date one year after the effective date of the final rule. Generally, operators would be required to complete the initial corrosion task before reaching the "threshold age (TA)" plus one "repetitive (R) interval" for the area, as detailed in the Service Bulletin. The corrosion task would be required to be repeated at a time interval not to exceed the R interval for that area, as detailed in the Service Bulletin.

Paragraph (a) of the supplemental notice includes paragraph (a)(1)(iv), which states that performance of the initial tasks by each operator must occur at a minimum rate equivalent to one airplane per year (beginning one year after the effective date of the AD). While this provision is also consistent with the Service Bulletin, the FAA recognizes that this may cause an undue hardship on some small operators. In those circumstances, the FAA anticipates evaluating requests for adjustment to the implementation rate on a case-by-case basis under the provisions of paragraph (h) of the proposed rule. A note to this effect has been added to the supplemental notice.

Paragraph A. of the original notice contained a "Note" to inform the public that all structure found corroded or cracked was required to be addressed in accordance with FAR part 43. Section 43.13, which is the relevant provision of part 43, requires that:

"... persons performing maintenance, alteration, or preventive maintenance on an aircraft, engine, propeller, or appliance shall use methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness prepared by its manufacturer, or other methods, techniques, and practices acceptable to the Administrator."

Since issuance of the original notice, the FAA has reconsidered this item and has determined that more specific and useful guidance as to the necessary action to be taken is set forth in the Service Bulletin itself, within the definition of a "corrosion task." Therefore, this note has been revised to reference this portion of the Service Bulletin and to emphasize the importance of these corrective actions. The new note explains that a "corrosion task" is defined in the Service Bulletin as

including not only the pertinent inspection, but any necessary repairs, application of corrosion inhibitors, and other follow-on procedures, as well.

Paragraph (b) of the supplemental notice provides an optional method of complying with the proposed rule. In lieu of performing the task-by-task requirements proposed in paragraph (a), operators may revise their FAA-approved maintenance/inspection programs to include the corrosion prevention and control program defined in the Service Bulletin, or an equivalent program approved by the FAA.

In response to questions previously raised concerning recordkeeping and record retention requirements as they relate to the programmatic approach originally proposed [and retained in paragraph (b) of this supplemental notice], the FAA offers the following:

Sections 91.417(a)(2)(v) and 121.380(a)(2)(v) of the FAR require that a record be made of the current status of applicable AD's. With regard to proposed paragraph (b), such a record would be required to be made when the maintenance/inspection program is revised to incorporate the program specified in the Service Bulletin; at that time, paragraph (b) of the AD would be fully complied with. Regarding paragraphs (d) through (g) of this supplemental notice, those paragraphs would impose separate requirements; therefore, except as discussed below, separate entries would have to be made to reflect compliance with each of those paragraphs.

Section 121.380(a)(2)(iv) of the FAR concerns recording "the identification of the current inspection status of the aircraft." Section 91.417(a)(2)(iv) contains a similar requirement. Because proposed paragraph (b) would require operators to revise their maintenance/inspection program to include the program specified in the Service Bulletin, each operator's program would be required to identify each inspection (e.g., "C" check) at which each corrosion task specified in the Service Bulletin will be performed on each airplane. By recording the current inspection status of each airplane, and by maintaining a cross-reference system between these records and the maintenance/inspection program revision, it will be possible to determine the current status of each corrosion task on each airplane. Once this cross-reference system has been established, this recording provision of sections 91 and 121 requires no additional recording beyond what would otherwise be required normally.

Section 121.380(a)(1) concerns "records necessary to show that all requirements for the issuance of an airworthiness release under section



121.709 have been met." Section 91.417(a)(1) contains a similar requirement. These are also referred to as "dirty fingerprint records." This provision of sections 91 and 121 requires most of the recording that would result from this proposed AD. Each time a corrosion task is performed, the operator would be required to make a "dirty fingerprint" record of the task, identifying what actions were accomplished. It should be noted, however, that these records are not different from the records made for any other actions taken under the operator's maintenance/inspection program.

In addition to the record making requirements, discussed above, sections 91 and 121 of the FAR impose requirements for record retention:

Section 121.380(b)(1) and section 91.417(b)(1) require that the "dirty fingerprint" records be retained until the work is repeated or superseded by other work, or for one year after the work is performed. Therefore, most of the records resulting from this proposed AD would not have to be retained indefinitely. However, such retention might facilitate subsequent transfers, or substantiate requests for repetitive interval escalations, and therefore, may be in the operator's interest.

Section 121.380(b)(2) requires that the records specified in paragraph 121.380(a)(2) [current status of AD's and current inspection status] be retained and transferred with the airplane at the time it is sold. Section 91.417(b)(2) contains a similar requirement.

These recording requirements are not considered to be unduly burdensome and are considered the minimum necessary to enable the cognizant FAA Maintenance Inspector to perform proper surveillance and to ensure that the objectives of the proposed rule are being fulfilled.

However, because of the numerous concerns expressed by operators regarding the recordkeeping obligations imposed by section 121.380 with regard to similar rulemaking on this subject, the FAA has included in the supplemental notice certain provisions for alternative recordkeeping methods. Proposed paragraph (b)(1) would provide for the development and implementation of such alternative methods, which must be approved by the FAA. For example, operators may choose to submit proposals to record compliance with paragraphs (d) through (g) of the AD by a means other than they normally use to record AD status. (As discussed previously, the FAA is currently developing guidance material that will contain information to be considered by

PMI's when reviewing proposals for alternative recordkeeping methods.)

Paragraph (c) of the supplemental notice provides for increasing a repetitive inspection interval by up to 10% in order to accommodate unanticipated scheduling requirements. Operators would be required to inform the FAA within 30 days of such increases.

Paragraph (d)(1) of the supplemental notice sets forth the reporting actions that are necessary to be accomplished when Level 3 corrosion is found. A similar requirement was proposed in the originally issued notice; however, upon reconsideration, the FAA finds that the original notice was ambiguous as to which corrosion findings operators were required to report. This particular requirement has been changed to clarify that it is upon the "determination" of Level 3 corrosion (not merely the "finding" of it) that the operator must notify the FAA. Within 7 days after such a determination is made, an operator would be required to accomplish one of the following actions:

1. Submit a report of the determination to the FAA and complete the corrosion task in the affected area on the remainder of the Model BAC 1-11 series airplanes in the operator's fleet; or
2. Submit a proposed schedule, for approval by the FAA, for performing the corrosion tasks in the affected area on the remainder of the operator's Model BAC 1-11 series fleet; or
3. Submit data substantiating that the Level 3 corrosion was an isolated occurrence.

Once the FAA has received such a report, if appropriate, it may, in conjunction with normal surveillance activities, request additional information regarding the results of the corrosion tasks performed on the remainder of the operator's Model BAC 1-11 series fleet.

Paragraph (d)(2) of the supplemental notice specifies that the FAA may impose schedules different from what an operator has proposed under paragraph (d)(1), if it is found that changes are necessary to ensure that any other Level 3 corrosion in the operator's Model BAC 1-11 series fleet is detected in a timely manner.

Paragraph (d)(3) of the supplemental notice would require that, within the time schedule approved by the FAA, the operator must accomplish the corrosion tasks in the affected areas on the remaining airplanes in its Model BAC 1-11 series fleet to ensure that any other Level 3 corrosion is detected.

Paragraph (e) would require that an operator, upon finding corrosion exceeding Level 1 during a repetitive

inspection, adjust its program to ensure that future corrosion findings are limited to Level 1 or better. Where corrective action is necessary to reduce corrosion to Level 1 or better, an operator must submit a proposal for a means of corrective action for the FAA's approval within 60 days after the determination of corrosion is made. That means, approved by the FAA, must then be implemented to reduce future findings of corrosion in that area to Level 1 or better.

With regard to paragraph (e), it should be noted that, if corrosion found is not considered representative of an operator's fleet, no further corrective action may be necessary, since a means to reduce any corrosion to Level 1 or better will have already been implemented in the operator's program in accordance with proposed paragraph (a) or (b). For example, if a finding of corrosion is attributable to a particular spill of mercury or other unique event, or if corrosion is found on an airplane recently acquired from another operator, the means specified in the existing program may be adequate for controlling corrosion in the remainder of the operator's fleet. Similarly, if an operator has already implemented means to reduce corrosion in an area based on previous findings, no additional corrective action may be necessary. In reviewing the reports submitted in accordance with the AD, the FAA will monitor the effectiveness of the operator's means to reduce corrosion. If the FAA determines that an operator has failed to implement adequate means to reduce corrosion to Level 1 or better, appropriate action will be taken to ensure compliance with this paragraph.

Paragraph (f) of the supplemental notice is similar to paragraph F. of the original notice in that it concerns adding airplanes to an operator's fleet, and the procedures that must be followed with regard to corrosion prevention and control. However, the applicability of paragraph (f) of the supplemental notice has been expanded to include not only air carrier operators, but all operators. The FAA has determined that the need to ensure that corrosion is prevented and controlled is equal for all Model BAC 1-11 series airplanes, whether they are newly acquired by air carrier operators or other types of operators.

Additionally, proposed paragraph (f) differentiates between procedures applicable to added airplanes that previously were maintained in accordance with this AD and those that were not so maintained. For airplanes that previously have been maintained in accordance with the proposed



requirements of this AD action, the first corrosion task in each area to be performed by the new operator would be required to be performed in accordance with either the previous operator's or the new operator's inspection schedule, whichever would result in the earlier accomplishment date for that task. For airplanes that have not been maintained in accordance with the proposed requirements of this AD action, the first corrosion task in each area to be performed by the new operator would be required to be performed before the airplane is placed in service, or in accordance with a schedule approved by the FAA.

With regard to the requirements of paragraph (f), the FAA considers it essential that operators ensure that transferred airplanes are inspected in accordance with the baseline corrosion prevention and control program on the same basis as if there were continuity in ownership. Scheduling of the inspections for each airplane must not be delayed or postponed due to a transfer of ownership; in some cases, such postponement could continue indefinitely if an airplane is transferred frequently from one owner to another. The supplemental notice has been clarified to state that the specified procedures would be required to be accomplished before any operator places into service any airplane subject to the requirements of the proposed rule.

Paragraph (g) of the supplemental notice would require that reports of Level 2 and Level 3 corrosion be submitted at least quarterly to British Aerospace. A note has been added to this paragraph indicating that the reporting of Level 2 and Level 3 corrosion found as a result of any opportunity inspections is highly desirable. Operators are not relieved, however, from reporting corrosion findings as required by FAR section 121.703.

#### *General Comments Received in Response to the Original Notice*

One commenter requests that a statement be included in the preamble to the rule to clarify that the service difficulty addressed has not involved Model BAC 1-11 series airplanes to date, nor has such jeopardy been apparent. The FAA notes that, as stated in the preamble to the original notice, the event that prompted the issuance of the proposed AD was the April 1988 incident involving a high-cycle Boeing Model 737 series airplane that suffered major structural damage in flight. The subsequent FAA-sponsored conference on aging airplanes, in concert with the Air Transport Association and the

Aerospace Industries Association of America, committed to identifying and implementing procedures to ensure continuing structural airworthiness of all aging transport category airplanes. As a result of that conference, representatives from aircraft operators, manufacturers, regulatory authorities, and other aviation representatives have determined that increased attention must be focused on the aging transport category airplanes of all manufacturers, including British Aerospace.

One commenter states that the Discussion section of the preamble to the notice refers to section 2 of the Service Bulletin as containing "basic guidelines" for developing a corrosion prevention and control program. The commenter notes that this term is misleading, since section 2 of the service bulletin contains the Accomplishment Instructions, which are, in fact, mandatory. The FAA notes that its use of the term "basic guidelines" was intended to acknowledge that section 2 of the service bulletin contains guidance information for operators to use in implementing the corrosion prevention and control program. Implementation of these basic guidelines, including Section 2 of the Service Bulletin, would be required by the proposed rule.

One commenter states that the reference to the "6-year maximum time period" for implementing the corrosion prevention and control program on any given airplane, as stated in the Discussion section of the preamble to the notice, was misleading. The commenter contends that the service bulletin contains an 8-year maximum time period, which is a conditional limitation for those airplanes that have been maintained in accordance with the manufacturer's corporate low utilization schedule. The FAA concurs. The FAA's intent in referring to a 6-year maximum time period for implementing the corrosion prevention and control program was that this time limit would apply to those airplanes that are not on the manufacturer's corporate low utilization schedule. Therefore, the FAA recognizes that, for those airplanes that are on the corporate low utilization schedule, the maximum time period for implementation of the corrosion prevention and control program is eight years.

One commenter states that the proposed rule should require compliance with only section 2, Accomplishment Instructions, of the Service Bulletin. Many other parts of the Service Bulletin are for the purpose of providing information only or to list other documents, and should not be construed

as mandatory. The FAA concurs. A note has been added to the supplemental notice to clarify that those sections of the Service Bulletin that are identified as "information only" would not be required to be accomplished.

Additionally, the following changes have been made to the supplemental notice for the purpose of clarification:

1. Where applicable throughout, the supplemental notice uses the more descriptive term, "corrosion prevention and control program," rather than "corrosion control program."

2. Where applicable throughout, the supplemental notice uses the more accurate term, "repetitive interval," rather than "repeat interval."

3. The word "task" has been changed to "corrosion task" throughout the supplemental notice to avoid confusion.

4. Paragraph (d) of the supplemental notice (previously designated as paragraph B. in the original notice) has been revised to clarify that a change to the operator's FAA-approved maintenance program is not necessary when that operator initiates a fleet campaign.

5. Paragraph (g) of the supplemental notice (previously designated as paragraph D. in the original notice) has been clarified to reference the reporting procedures specified in section 2.5 of the Service Bulletin as appropriate reporting procedures, and is meant to be a separate reporting requirement from that of paragraph (d)(1)(i).

6. Paragraph (h) of the supplemental notice has been revised to specify the current procedure for submitting requests for approval of alternative methods of compliance.

7. The format of the supplemental notice has been restructured to be consistent with the standard Federal Register style.

8. The economic analysis information, below, has been revised to increase the specified hourly labor rate from \$40 per manhour (as was cited in the preamble to the original notice) to \$55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

Since the changes discussed above address a number of issues that were not specifically addressed in the originally proposed rule, the comment period has been reopened for 45 days to solicit comments from the public on these changes.

The FAA estimates that 45 airplanes of U.S. registry would be affected by this proposed AD. It would take approximately a total of 700 work hours



per airplane to accomplish the initial corrosion tasks for all of the affected areas, at an average labor cost of \$55 per manhour. Based on these figures, the total cost impact of the proposed AD on U.S. operators for the initial inspection cycle is expected to be \$1,732,500, or \$38,500 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

##### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**British Aerospace:** Docket 91-NM-24-AD.

**Applicability:** All Model BAC 1-11 200 and 400 series airplanes, certificated in any category.

**Compliance:** Required as indicated, unless accomplished previously.

**Note 1.**—This AD references British Aerospace Alert Service Bulletin 5-A-PM5987, "Time Limits—Aircraft General—Corrosion Control Programme," Issue 2, dated June 30, 1992, for corrosion tasks, compliance times, and reporting requirements. In addition, this AD specifies inspection and reporting requirements beyond those included in that Service Bulletin. Where there are differences between the AD and the Service Bulletin, the AD prevails.

**Note 2.**—As used throughout this AD, the term "the FAA" is defined differently for different operators, as follows: For those operators complying with paragraph (a) of this AD, "the FAA" is defined as "the Manager of the Standardization Branch, ANM-113, FAA, Transport Airplane Directorate." For those operators operating under Federal Aviation Regulation (FAR) Part 121 or 129, and complying with paragraph (b) of this AD, "the FAA" is defined as "the cognizant Principal Maintenance Inspector (PMI)." For those operators operating under FAR Part 91 or 125, and complying with paragraph (b) of this AD, "the FAA" is defined as "the cognizant Maintenance Inspector at the appropriate FAA Flight Standards office."

To prevent degradation of the structural capabilities of the airplane due to the problems associated with corrosion damage, accomplish the following:

(a) Except as provided in paragraph (b) of this AD, complete each of the corrosion tasks specified in Appendix 3 of British Aerospace Alert Service Bulletin 5-A-PM5987, "Time Limits—Aircraft General—Corrosion Control Programme," Issue 2, dated June 30, 1992 (hereafter referred to as "the Service Bulletin"), in accordance with the procedures of the Service Bulletin, and in accordance with the schedule specified in paragraphs (a)(1) and (a)(2) of this AD.

**Note 3.**—A "corrosion task," as defined in Appendix 3 of the Service Bulletin, includes inspections; procedures for a corrective action, including repairs, under identified circumstances; application of corrosion inhibitors; and other follow-on actions.

**Note 4.**—Corrosion tasks completed in accordance with the Service Bulletin before the effective date of this AD may be credited for compliance with the initial corrosion task requirements of paragraph (a)(1) of this AD.

**Note 5.**—Where non-destructive inspection (NDI) methods are employed, in accordance with appendix 3 of the Service Bulletin, the standards and procedures used must be acceptable to the Administrator in accordance with FAR section 43.13.

**Note 6.**—Procedures identified in the Service Bulletin as "informational only" are not required to be accomplished by this AD.

(1) Complete the initial corrosion task of each "corrosion inspection area" defined in appendix 3 of the Service Bulletin as follows:

(i) For aircraft areas that have not yet reached the "threshold age" (TA) as of one year after the effective date of this AD, initial compliance must occur no later than the TA plus the repetitive (R) interval.

(ii) For aircraft areas that have exceeded the TA as of one year after the effective date of this AD, initial compliance must occur

within the R interval for the area, measured from a date one year after the effective date of this AD.

(iii) For airplanes that are 20 years old or older as of one year after the effective date of this AD, initial compliance must occur for all areas within one R interval, or within six years, measured from a date one year after the effective date of this AD, whichever occurs first.

(iv) In all cases, accomplishment of the initial tasks by each operator must occur at a minimum rate equivalent to one airplane per year, beginning one year after the effective date of this AD.

**Note 7.**—This minimum rate requirement may cause a hardship on some small operators. In those circumstances, requests for adjustments to the implementation rate will be evaluated on a case-by-case basis under the provisions of paragraph (h) of this AD.

(2) Repeat each corrosion task at a time interval not to exceed the R interval specified in the Service Bulletin for that task.

(b) As an alternative to the requirements of paragraph (a) of this AD: Prior to one year after the effective date of this AD, revise the FAA-approved maintenance/inspection program to include the corrosion prevention and control program specified in the Service Bulletin; or to include an equivalent program that is approved by the FAA. In all cases, the initial corrosion task for each "corrosion inspection area" must be completed in accordance with the compliance schedule specified in paragraph (a)(1) of this AD.

(1) Any operator complying with paragraph (b) of this AD may use an alternative recordkeeping method to that otherwise required by FAR section 91.417 or section 121.380 for the actions required by this AD, provided it is approved by the FAA and is included in a revision to the FAA-approved maintenance/inspection program.

(2) Subsequent to the accomplishment of the initial corrosion task, extensions of R intervals specified in the Service Bulletin must be approved by the FAA.

(c) To accommodate unanticipated scheduling requirements, it is acceptable for an R interval to be increased by up to 10%, but not to exceed 6 months. The FAA must be informed, in writing, of any such extension within 30 days after such adjustment of the schedule.

(d)(1) If, as a result of any inspection conducted in accordance with paragraphs (a) or (b) of this AD, Level 3 corrosion is determined to exist in any area, accomplish either paragraph (d)(1)(i) or (d)(1)(ii) within 7 days after such determination:

(i) Submit a report of that determination to the FAA and complete the corrosion task in the affected areas on all Model BAC 1-11 series airplanes in the operator's fleet; or

(ii) Submit to the FAA for approval one of the following:

(A) A proposed schedule for performing the corrosion tasks in the affected areas on the remaining Model BAC 1-11 series airplanes in the operator's fleet, which is adequate to ensure that any other Level 3 corrosion is detected in a timely manner, along with substantiating data for that schedule; or



(B) Data substantiating that the Level 3 corrosion found is an isolated occurrence.

**Note 8.**—Notwithstanding the provisions of Table 1 of the Service Bulletin, which would permit corrosion that otherwise meets the definition of Level 3 corrosion (i.e., which is determined to be a potentially urgent airworthiness concern requiring expeditious action) to be treated as Level 1 if the operator finds that it, "can be attributed to an event not typical of the operator's usage of other airplanes in the same fleet," this paragraph requires that data substantiating any such finding be submitted to the FAA for approval.

(2) The FAA may impose schedules other than those proposed, upon finding that such changes are necessary to ensure that any other Level 3 corrosion is detected in a timely manner.

(3) Within the time schedule approved under paragraph (d)(1) or (d)(2) of this AD, accomplish the corrosion tasks in the affected areas of the remaining Model BAC 1-11 series airplanes in the operator's fleet.

(e) If, as a result of any inspection after the initial inspection conducted in accordance with paragraphs (a) or (b) of this AD, it is determined that corrosion findings exceed Level 1 in any area, within 60 days after such determination a means approved by the FAA must be implemented to reduce future findings of corrosion in that area to Level 1 or better.

(f) Before any operator places into service any airplane subject to the requirements of this AD, a schedule for the accomplishment of corrosion tasks required by this AD must be established in accordance with paragraph (f)(1) or (f)(2) of this AD, as applicable:

(1) For airplanes previously maintained in accordance with this AD, the first corrosion task in each area to be performed by the new operator must be accomplished in accordance with the previous operator's schedule or with the new operator's schedule, whichever would result in the earlier accomplishment date for that task. After each corrosion task has been performed once, each subsequent task must be performed in accordance with the new operator's schedule.

(2) For airplanes that have not been previously maintained in accordance with this AD, the first corrosion task for each area to be performed by the new operator must be accomplished prior to further flight or in accordance with a schedule approved by the FAA.

(g) Reports of Level 2 and Level 3 corrosion must be submitted at least quarterly to British Aerospace in accordance with Section 2.5 of the Service Bulletin.

**Note 9.**—Reporting of Level 2 and Level 3 corrosion found as a result of any opportunity inspections is highly desirable.

(h) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through the cognizant Maintenance Inspector at the appropriate FAA Flight Standards office, who may concur or comment and then send it to the Manager, Los Angeles ACO.

**Note 10.**—Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(i) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(j) Reports of corrosion inspection results required by this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120-0056.

Issued in Renton, Washington, on November 9, 1992.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92-27645 Filed 11-13-92; 8:45 am]

BILLING CODE 4910-13-M

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 250 and 259

[Release No. 35-25668; File No. S7-35-92]

RIN 3235-AF68

### Public Utility Holding Company Act Rules

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Proposed amendments to rules, rule rescission, and requests for comment.

**SUMMARY:** The Commission is proposing for public comment amendments to or rescission of twenty rules and forms under the Public Utility Holding Company Act of 1935 ("Act"). Many of the amendments would reduce the regulatory burdens under the Act for companies in a registered holding company system by expanding existing exemptions for certain acquisitions and sales, investments in nonutility enterprises, and the provision of services to foreign associate companies. The Commission also proposes to rescind the rule requiring competitive bidding for the issue and sale of securities by companies in a registered holding company system. In addition, the Commission proposes to expand the exemption from regulation for companies that are primarily engaged in nonutility businesses. Finally, the Commission is proposing a number of minor amendments to update or clarify the requirements of the rules.

**DATES:** Comments must be submitted on or before January 15, 1993.

**ADDRESSES:** Comments should be submitted in triplicate to Jonathan G.

Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 6-9, Washington, DC 20549. Comment letters should refer to File No. S7-35-92. All comment letters received will be made available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

### FOR FURTHER INFORMATION CONTACT:

Sidney L. Cimet, Senior Special Counsel, (202) 272-7676, Joanne C. Rutkowski, Senior Special Counsel (202) 504-2267, Brian P. Spires, Attorney, (202) 272-7688, or James W. Moeller, Attorney, (202) 272-7831, Office of Public Utility Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549

**SUPPLEMENTARY INFORMATION:** The Commission is requesting comment on proposed amendments to rules 7, 26, 27, 29, 40(a)(5), 41(c), 42(b), 43(b), 44(b), 49, 62, 63, 65(b)(2), 71(b) and 83(d) under the Act [15 U.S.C. 79 *et seq.*] and Forms U5S, U-12(I)-A, U-12(I)-B and U-13-60, and the proposed rescission of rule 50.

### I. Discussion

The proposals are intended generally to modernize the rules under the Act and, in particular, to reduce undue regulatory burdens on companies in a registered holding company system. The amendments would also broaden the exemption from regulation for companies that are primarily engaged in nonutility businesses.

#### A. Rule 7(a): Companies Deemed Not To Be Electric or Gas Utility Companies

Rule 7, adopted under sections 2(a)(3) and 2(a)(4), provides, in pertinent part, that a company which is primarily engaged in one or more businesses other than the business of any electric or gas utility company, shall not be deemed an electric or gas utility company within the meaning of those sections if the gross sales of electric energy, or of natural or manufactured gas distributed at retail by means of the facilities owned or operated by such company, did not exceed \$100,000 during the previous calendar year.<sup>1</sup> The dollar

<sup>1</sup> 17 CFR 250.7(a). See Holding Co. Act Release No. 24 (Nov. 25, 1935) (adopting release).

Section 2(a)(3) defines an electric utility company as any company which owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale. Section 2(a)(4) defines a gas utility company as any company which owns or operates facilities used for the distribution at retail of natural or manufactured gas. Sections 2(a)(3) and 2(a)(4) also authorize the Commission to make rules



limitation has not changed since the precursor to rule 7 was adopted in 1935.

The Commission proposes to amend the rule to exempt a company if its average annual gross energy sales for the preceding three calendar years did not exceed \$5 million. The Commission believes that the current dollar limitation is no longer practical. The proposed amendment should reduce the number of filings by industrial companies that own or operate power facilities primarily for their operations.<sup>2</sup> Use of a three-year average would eliminate the need for an application where sales in a given year unexpectedly exceed the dollar limitation.

#### *B. Rule 29: Filing of Reports to Stockholders and State Commissions*

Rule 29, adopted under sections 14, 15 and 20(a) of the Act, requires, among other things, that a registered holding company or its subsidiary file with the Commission copies of any report submitted to stockholders.<sup>3</sup> Since the adoption of the rule in 1954, Form U5S has been amended to require the filing of annual reports to shareholders.<sup>4</sup> In addition, the other federal securities laws mandate extensive disclosure.<sup>5</sup> Accordingly, the Commission proposes to amend the rule to delete the shareholder report filing requirement.

#### *C. Rule 40(a)(5): Exemption of Certain Acquisitions From Nonaffiliates*

Rule 40(a)(5), adopted in 1941 under sections 3(d) and 9(c)(3), exempts from the requirement of prior Commission approval under sections 9(a) and 10 certain acquisitions of securities of industrial and other nonutility enterprises located in the territory in which the acquiring company carries on

its business (other than the business of a holding company or an investment company as such).<sup>6</sup> Under the present rule, the total cost of all acquisitions during any calendar year may not exceed \$50,000 for investments in companies organized under special state business development laws, and \$10,000 for investment in securities of other companies.<sup>7</sup> Companies relying upon the rule are subject to the requirement that an acquisition not result in affiliation with the industrial or other nonutility company.<sup>8</sup>

The rule is intended to facilitate investment by regulated companies to encourage economic development within their respective service territories. Since the rule was last amended in 1963, the Commission has, by order, authorized a number of investments in amounts exceeding those allowed by the rule.<sup>9</sup>

To enhance the usefulness of the rule, the Commission proposes to remove the dollar limitation for investments made pursuant to state business development laws, and to increase the annual dollar limitation to \$1 million for other investments under the rule. In conjunction with the proposed rule amendment, the Commission is proposing an amendment to Form U5S to include a reporting requirement for such investments. Such disclosure, together with the rule's restrictions as to affiliate relationships, should ensure that investments pursuant to the rule will not be detrimental to the public interest or the interest of investors or consumers.

#### *D. Rule 41(c): Exemption of Public-Utility Subsidiaries With Respect to Limited Acquisition of Utility Assets*

Rule 41(c), adopted under section 3(d), exempts from the requirement of prior

Commission approval under sections 9(a) and 10 certain limited acquisitions of utility assets by a public-utility subsidiary of a registered holding company.<sup>10</sup> Under the present rule, the aggregate amount of such acquisitions during a calendar year may not exceed the lesser of \$100,000 or 5% of the gross annual revenues of the acquiring company derived from its operations as a public-utility company during the preceding calendar year.<sup>11</sup> The dollar limitation has not changed since the precursor to rule 41 was adopted in 1938.<sup>12</sup>

The Commission believes that the present dollar limitation is no longer practical and proposes to amend the rule to increase the limitation to \$5 million. The rule, by its terms, applies only to electric utility assets that are, or immediately following the transaction will be, connected with electric utility assets that the acquiring company already owns and operates, or gas utility assets that are located in or adjacent to the service area in which the acquiring company already owns and operates gas utility assets.<sup>13</sup> These physical interconnection requirements, together with existing reporting requirements, should ensure that acquisitions under the rule do not contravene the integration standards of the Act.<sup>14</sup>

#### *E. Rule 42(b): Acquisition, Retirement and Redemption of Securities by the Issuer Thereof*

Rule 41, adopted under sections 9(c)(3), 12(c) and 20(a), imposes a general requirement of prior Commission approval under sections 9(a) and 10, and 12(c) and rules thereunder for transactions involving the acquisition, retirement, or redemption by a registered holding company or its subsidiary of certain securities of which that company is the

declaring a company not to be an "electric utility company" or a "gas utility company" for purposes of the Act if the Commission finds that the company is primarily engaged in one or more nonutility businesses and that by reason of the small amount of electric energy that the company sells, or the natural or manufactured gas that it distributes at retail, it is not necessary in the public interest or for the protection of investors or consumers that the company be considered a utility.

<sup>2</sup> See e.g., *LTV Steel Mining Co.*, Holding Co. Act Release No. 25360, 49 SEC Docket 936 (Aug. 27, 1991) (limited partnership engaged in iron ore manufacturing with electricity sales of \$2,225,511).

<sup>3</sup> 17 CFR 250.29. Holding Co. Act Release No. 12430, 19 FR 1819 (Apr. 2, 1954) (adopting release).

<sup>4</sup> Holding Co. Act Release No. 23214, 49 FR 4717 (Feb. 8, 1984) (amending Form U5S, the annual reporting form filed by registered holding companies with the Commission).

<sup>5</sup> For example, registered holding companies and their subsidiary companies file periodic reports with the Commission on Forms 10-K and 10-Q, and current reports on Form 8-K, as well as a variety of other reports filed under special circumstances such as a proxy solicitation or tender offer.

<sup>6</sup> 17 CFR 250.40(a)(5). See *Holding Co. Act Release No. 2694* (Apr. 21, 1941) (adopting release).

<sup>7</sup> The rule requires that investments subject to the \$50,000 limit be in companies "organized for the purpose of, and in accordance with a State law specifically relating to, promoting the development of business and industry in [the acquiring company's service territory] \* \* \*."

<sup>8</sup> The present rule provides: "In no event, however, will the above exemption as to securities of an industrial development corporation be applicable where, by reason of such acquisition, said corporation will become an affiliate of the company acquiring its securities." The rule also excludes acquisitions involving as associate or an affiliate of the acquiring company or an affiliate of an associate company. See section 2(a)(11) (definition of "affiliate"); section 2(a)(10) (definition of "associate company").

<sup>9</sup> See, e.g., *Hope Gas, Inc.*, Holding Co. Act Release No. 25407, 50 SEC Docket 344 (Nov. 26, 1991) (investment of \$2 million in a limited partnership engaged in making venture capital investments in businesses located in its service territory).

<sup>10</sup> 17 CFR 250.41(c). See *Holding Co. Act Release No. 1201* (Aug. 15, 1938) (adopting release).

<sup>11</sup> Compare section 9(b)(1) (a company can acquire an unlimited amount of utility assets if the acquisitions have been expressly authorized by a state commission).

<sup>12</sup> An amendment in 1941 (did not address the dollar limitation of the rule. *Holding Co. Act Release No. 2694* (Apr. 21, 1941)).

<sup>13</sup> The Act defines an integrated public-utility system to require, among other things, that electric utility assets are physically interconnected or capable of physical interconnection, and that gas utility assets are so located and related as to be operated as a single coordinated system. Section 2(a)(29).

<sup>14</sup> Form U5S generally requires annual reporting of any acquisitions of "utility plant in service or under construction of any electric utility company or retail gas utility company for the production, transmission or distribution of electric energy or distribution of natural or manufactured gas."



issuer.<sup>15</sup> At present, there are six narrow categories of transactions exempted from this requirement.<sup>16</sup> The exemption does not apply to transactions involving common stock.

The requirement of Commission approval was intended to protect the financial integrity of companies in holding-company systems and to safeguard the working capital of public-utility companies.<sup>17</sup> The exemptions under the present rule afford regulated companies limited flexibility to adjust the debt and equity components of their capital structure in order to take advantage of changing capital market conditions.

The Commission proposes to amend the rule to enhance the companies' flexibility by exempting all transactions in which a registered holding company or its subsidiary acquires, retires, or redeems a security of which it is the issuer (or which it has assumed or guaranteed), provided that the exemption shall not apply to a transaction with an associate company, an affiliate, or an affiliate of an associate company.<sup>18</sup> We have previously noted the ability of state regulators to enforce appropriate capital ratios for public-utility companies. In addition, system companies, in response to market forces, will seek to maintain appropriate capital structures to support their credit ratings.<sup>19</sup> The rule's

restrictions upon transactions with associate companies, affiliates, or affiliates of associate companies, together with existing reporting requirements, should protect against potential abuses.<sup>20</sup>

#### F. Rule 43(b): Sales to Affiliates

Rule 43, adopted in 1938 under sections 6(b), 12(d), 12(f) and 27(a), imposes a general requirement of prior Commission approval under sections 6(a) and 7, 12(d) and 12(f) and rules thereunder for certain sales of securities, utility assets or an interest in a nonutility business by a registered holding company or its subsidiary to an associate company or an affiliate of an associate company.<sup>21</sup> At present, there are three narrow categories of transactions exempted from this requirement.<sup>22</sup>

The requirement of Commission approval was intended "to prevent piecemeal evasion of the reorganization safeguards set up in section 11" and to "prevent the sacrifice of the investor's equity."<sup>23</sup> The exemptions under the present rule afford registered holding company systems limited flexibility to engage in certain intrasystem and affiliate sales.

The Commission proposes to increase the usefulness of the rule by creating a single expanded exemption for annual sales of securities, utility assets, or any other interest in any business up to an annual aggregate consideration of \$5 million where the acquisition by the vendee is not subject to the approval of the Commission.<sup>24</sup> Existing reporting

requirements under the Act should safeguard against potential abuses.<sup>25</sup>

#### G. Rule 44(b): Sales of Securities and Assets

Rule 44, adopted in 1938 under section 12(d) and amended, as here relevant, in 1941, imposes a general requirement of Commission approval pursuant to the section and rules thereunder for direct or indirect sales of utility securities or utility assets by a registered holding company to any person.<sup>26</sup> The rule exempts four narrow categories of transactions from this requirement.<sup>27</sup>

As noted above, the requirement of Commission approval was intended "to prevent piecemeal evasion of the reorganization safeguards set up in section 11" and to "prevent the sacrifice of the investor's equity."<sup>28</sup> The exemptions under the present rule afford regulated companies limited flexibility to engage in sales of utility securities and assets.

The Commission proposes to increase the usefulness of the rule by creating a single expanded exemption for sales up to an annual aggregate consideration of \$5 million where the acquisition by the vendee is not subject to the approval of the Commission.<sup>29</sup> Existing reporting requirements under the Act should safeguard against potential abuses.<sup>30</sup>

<sup>25</sup> Form U5S requires annual reporting of sales in excess of \$1 million of "utility plant in service or under construction of any electric utility company or retail gas utility company for the production, transmission or distribution of electric energy or distribution of natural or manufactured gas."

A registered holding company also must report annually, on Form U5S, "issuances, sales or pledges of securities of system companies or guaranty or assumption by system companies of securities of other persons, including system companies or exempted subsidiaries, stating the name of the issuer, the name of the system company if different, describing the securities, the date and form of the transaction, the consideration and the exemption claimed."

<sup>26</sup> 17 CFR 250.44. See Holding Co. Act Release No. 1066 (Apr. 19, 1938) (adopting release); Holding Co. Act Release No. 2694 (Apr. 21, 1941); Holding Co. Act Release No. 6318 (Dec. 27, 1945) (amendments).

<sup>27</sup> Paragraph (b) of the present rule exempts sales of: (1) Securities of a company that is not a subsidiary of the holding company, (2) securities or utility assets if the total consideration is less than \$100,000, and the acquisition by the vendee is not subject to the approval of the Commission; (3) securities or utility assets to a state or federal governmental agency; and (4) securities issued, or utility assets owned, by a public utility company which does not operate or have any subsidiary which operates in the United States. 17 CFR 250.44(b).

<sup>28</sup> Senate Report at 35. Rule 44 was adopted under section 12(d). The quoted language appears in the legislative history on section 12.

<sup>29</sup> See *supra* note 24.

<sup>30</sup> See *supra* note 25.

<sup>15</sup> 17 CFR 250.42. Holding Co. Act Release No. 232 (June 5, 1936) (adopting precursor to rule 42); Holding Co. Act Release No. 2694 (Apr. 21, 1941) (adopting rule 42).

<sup>16</sup> Paragraph (b) of the present rule exempts: (1) The retirement of treasury securities; (2) the acquisition, retirement or redemption of any evidence of indebtedness, at maturity or otherwise, for the consideration specifically designated therein; (3) the acquisition, retirement or redemption of any security pursuant to a conversion privilege; (4) the acquisition, retirement or redemption of any evidence of indebtedness in accordance with any indenture requirement then applicable, or in an aggregate amount estimated not to exceed the amount of any sinking fund or other periodic requirement for the following twelve months; (5) the acquisition, retirement or redemption in any calendar year of not more than two percent of the amount of a given class of securities; and (6) the acquisition, retirement or redemption of any securities, other than common stock, at a cost not exceeding \$50,000 in any calendar year. 17 CFR 250.42(b).

<sup>17</sup> Section 12(c).

<sup>18</sup> The legislative history indicates that the regulation of intercompany transactions under section 12 was intended "to prevent the milking of operating companies for undue advantage to the controlling holding company groups." H.R. Rep. No. 1318, 74th Cong., 1st Sess. 17 (1935). The Senate Report stated, in regard to section 12: "Unless appropriate discretion is given to the Commission, new devices will spring up and may result in nullifying the provisions of [the Act]." S. Rep. No. 621, 74th Cong., 1st Sess. 34 (1935) ("Senate Report").

<sup>19</sup> See Holding Co. Act Release No. 25573, 57 FR 31120 (July 14, 1992), in which the Commission

removed the requirement of a 65/30% debt-to-equity ratio as a condition for exemption of the issue and sale of securities under rule 52 [17 CFR 250.52].

<sup>20</sup> A registered holding company must report annually, on Form U5S, "any system securities acquired, redeemed, or retired," and "the name of the system company acquiring or retiring the securities." \* \* \* the consideration, whether the securities have been extinguished or are held for further disposition, and the authorization or exemption relied on."

<sup>21</sup> 17 CFR 250.43. See Holding Co. Act Release No. 1350 (Dec. 9, 1938) (adopting release). As here relevant, the rule was amended in 1941. Holding Co. Act Release No. 2694 (Apr. 21, 1941) (amendment).

<sup>22</sup> Paragraph (b) of the present rule exempts (1) any sale of securities if the acquisition by the vendee is within the exemption from section 9(a) provided by section 9(b)(2), (2) any sale of securities or utility assets if the total consideration is less than \$100,000 and the acquisition by the vendee is not subject to the approval of the Commission, and (3) certain sales of securities of a mutual or subsidiary service company. 17 CFR 250.43(b).

<sup>23</sup> Senate Report at 35. Rule 43 was adopted under sections 6(b), 12(d) and 12(f). The quoted language appears in the legislative history on section 12.

<sup>24</sup> Acquisitions not subject to Commission approval would include, for example, an acquisition of utility assets within the exemption provided by rule 41, discussed *supra*, or sections 9(b) or 9(c), as applicable.



*H. Rule 50: Requirement of Public Invitation of Proposals for the Purchase or Underwriting of Securities*

Rule 50, adopted in 1941 and sections 6(b), 7, 12(d) and 20, imposes a general requirement of competitive bidding with respect to the issuance or sale of securities by a registered holding company or its subsidiary.<sup>31</sup> The rule was intended to ensure the maintenance of competitive conditions, the receipt of adequate consideration, and the reasonableness of fees or commissions to be paid in connection with the issuance or sale of securities by a registered holding company or its subsidiary.

The Commission proposes to rescind rule 50. As we recently noted in another context, companies in a registered holding company system should have the flexibility to access the capital markets by the use of competitive bids, negotiated sales, or private placements.<sup>32</sup> The Commission believes that there now exist protections to prevent the recurrence of abuses in the issuance and sale of securities that were the impetus for the rule.<sup>33</sup> In particular,

<sup>31</sup> 17 CFR 250.50. Holding Co. Act Release No. 2676 (May 7, 1941). The rule was last amended in 1954. Holding Co. Act Release No. 12298 (Jan. 13, 1954).

Paragraph (a) of the present rule exempts five categories of transactions: (1) The issuance or sale of securities pro rata to existing holders of securities; (2) the issuance of a debt security with a maturity of less than ten years to certain financial institutions, not for resale to the public; (3) the issuance or sale of securities to any registered holding company or its subsidiary company, if the Commission has approved the acquisition of the securities; (4) the issuance or sale of securities, the total proceeds of which to the issuer or vendor will not exceed \$1 million; and (5) the issuance or sale of securities as to which the Commission finds public invitation of proposals is not (A) appropriate to aid in the determination whether the fees are reasonable, or whether any term or condition is detrimental to the protected interests, (B) appropriate as a condition to the exemption of such issuance or sale from the provisions of section 6(a), or to aid the Commission in determining such terms and conditions as may be appropriate to condition an exemption under section 6(b), or (C) necessary or appropriate in the public interest or for the interest of investors or consumers to assure the maintenance of competitive conditions, the receipt of adequate consideration, or the reasonableness of any fees or commissions to be paid with respect to sales of securities subject to section 12(d). 17 CFR 250.50(a).

<sup>32</sup> Holding Co. Act Release No. 25573, 57 FR 31120 (July 14, 1992) (eliminating the requirement of competitive bidding as a condition of exemption under rule 52).

<sup>33</sup> For example, the extensive reporting requirements imposed by the federal securities laws, and the increased scrutiny of reporting companies generally since the passage of the Act 57 years ago, have resulted in an abundance of public information available for public and private sales of securities.

unless otherwise exempted, the underlying transaction will remain subject to prior authorization by the Commission.<sup>34</sup> Finally, existing reporting requirements should safeguard against potential abuses.<sup>35</sup>

*I. Rule 65: Expenditures in Connection with Solicitation of Proxies*

Rule 65, adopted under section 12(e), imposes a general requirement of Commission approval pursuant to that section and rules thereunder before a registered holding company or its subsidiary can make any expenditures in connection with a solicitation of proxies.<sup>36</sup> The rule was intended to prevent improper expenses in the proxy solicitation process. The present rule exempts extraordinary expenditures up to \$1,000 during any one calendar year. The Commission proposes to enhance the usefulness of the rule by increasing the dollar limitation to \$100,000 during any one calendar year. We note that in virtually every instance, a proxy solicitation is subject to Commission review under the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq.*], in addition to regulation under the Act.<sup>37</sup>

*J. Rule 71: Statements to be Filed Pursuant to Section 12(i) of the Act*

Rule 71, adopted under section 12(i), imposes, a general filing requirement with respect to any person who engages in any activity within the scope of that section.<sup>38</sup> At present, the rule permits the filing of an advance statement covering anticipated activity for the remainder of the calendar year by "any person \* \* \* who is a salaried officer or employee or an attorney, accountant or other expert regularly retained by any company or by companies in the same holding company system, or any person

<sup>34</sup> Section 7(d)(4) requires that fees or other remuneration paid in connection with the issue, sale or distribution of the security be reasonable.

<sup>35</sup> A company must report, on Form U-6B-2, the terms and conditions of any transactions exempt from the requirement of prior Commission approval under sections 6 and 7 pursuant to rule 52.

<sup>36</sup> 17 CFR 250.65(a). See Holding Co. Act Release No. 2681 (Apr. 9, 1941) (adopting release).

<sup>37</sup> Section 12(e) and rules 61 and 62 thereunder govern proxy solicitations under the Act.

<sup>38</sup> 17 CFR 250.71. See Holding Co. Act Release No. 84 (Jan. 28, 1936) (adopting precursor to rule 71); Holding Co. Act Release No. 2694 (Apr. 21, 1941) (adopting rule 71); Holding Co. Act Release No. 3136 (Nov. 24, 1941) (amendment). Section 12(i) imposes a reporting requirement upon any person employed or retained by any registered holding company, or any subsidiary company thereof, to present, advocate, or oppose any matter affecting any registered holding company or any subsidiary company thereof, before the Congress or any Member or committee thereof, or before the Commission of [Federal Energy Regulatory Commission], or any member, officer, or employee of either such commission.

specially retained in connection with a particular proceeding or enterprise which is expected to involve a series of appearances or activities."<sup>39</sup>

Under the language of the present rule, the Commission has received a number of filings by persons not within the intent of section 12(i). To clarify the scope of the rule, we are proposing to amend rule 71(b) to incorporate the statutory language. In addition, we propose to amend the rule and Forms U-12(I)-A and U-12(I)-B thereunder to lengthen the advance statement period from one to up to three years to obviate the need for more frequent filings.

*K. Rule 83: Exemption in the Case of Transactions with Foreign Associates*

Rule 83, adopted in 1939 under section 13(b), allows subsidiary companies of registered holding companies to provide services for associate foreign companies without complying with the standards established by section 13(b) and rules thereunder or filing an application for exemption from that section, so long as the aggregate cost to all such associate companies does not exceed \$10,000 within any one calendar year.<sup>40</sup> The Act requires that contracts entered into with associate companies be performed economically and efficiently for the benefit of the associate companies at cost, fairly and equitably allocated among the companies.<sup>41</sup> The Commission is authorized to exempt transactions with foreign associate companies as being necessary or appropriate in the public interest or for the protection of investors or consumers.<sup>42</sup>

The Commission proposes to amend the rule to exempt services for foreign associate companies so long as the cost of services does not exceed the charge to the foreign associate company for such services. The requirement that services be provided at not less than cost should prevent the subsidization of foreign activities by domestic system companies.

*L. Form U-13-60: Annual Report for Mutual and Subsidiary Service Companies*

The Commission proposes to amend the account listing, definitions and reporting requirement of the uniform system of accounts for mutual and subsidiary service companies ("Uniform System of Accounts") and Form U-13-60

<sup>39</sup> 17 CFR 250.71(b).

<sup>40</sup> 17 CFR 250.83(d). See Holding Co. Act Release No. 1568 (June 5, 1939) (adopting release).

<sup>41</sup> Section 13.

<sup>42</sup> Section 13(b).



under the Act, which is the annual report form for these companies.<sup>43</sup> Rules 93 and 94, which prescribe the method of keeping accounts and records and define specific subaccount and supporting accounts for service companies, incorporate the Uniform System of Accounts.<sup>44</sup> That system was designed to be consistent with the Federal Energy Regulatory Commission's ("FERC") standard accounts for utility companies which are the service companies' customers.<sup>45</sup> Because the FERC has altered its account definitions since the Commission last amended rules 93 and 94, we propose to amend Form U-13-60 accordingly.<sup>46</sup>

#### M. Other Matters

Finally, the Commission proposes to amend or remove obsolete language and references in rules, including references to the Federal Power Commission, the Atomic Energy Commission and the Bankruptcy Act.<sup>47</sup>

#### II. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, regarding the proposed amendment to rule 7. The Analysis explains that the proposed amendment to rule 7 is intended to expand the exemption from regulation for companies that are primarily engaged in nonutility businesses. The Analysis describes the present regulatory framework under which a company operating public-utility facilities must obtain a Commission order declaring it not to be an electric or gas utility company, unless the gross sales of electric energy, or of natural or manufactured gas distributed at retail by means of the facilities owned or operated by such company,

did not exceed \$100,000 during the previous calendar year. The exemption by order is not available for companies that own but do not operate such facilities. The proposed amendment would increase the dollar sales allowable under the exemption to \$5 million. The Analysis states that several significant alternatives to the proposed amendment were considered, including continuing to grant exemptions by order on a case-by-case basis, but concludes that the proposed amendment provides the least impact on, or cost to, small businesses. A copy of the Initial Regulatory Flexibility Analysis may be obtained from Brian P. Spires, at Mail Stop 10-6, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

The other proposed rule and form amendments will not affect any small entities as defined in rule 110. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the proposed amended rules will not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release as exhibit A.

#### III. Cost/Benefit of Proposed Actions

The proposed amendments will decrease regulatory compliance costs for companies in a registered holding company system. In fiscal year 1991, for example, the amendments would have eliminated the need for 14 applications and approximately 785 forms, and would have reduced the regulatory burden associated with an additional 58 applications, for an estimated savings of more than \$1.1 million. Moreover, the amendments would have reduced by approximately 2,016 hours the staff time associated with reviewing and analyzing these applications. The only cost to the companies complying with the amended rules will be the cost of reporting on Form U5S the information required by rule 40(a)(5) and reporting on Form U-13-60 a schedule or analysis of accounts. It is estimated that no more than one-half hour for Form U5S and one hour for the Form U-13-60 will be required to complete the additional information required by the proposed changes to these forms.

Comments are requested, however, on the above assessment of the costs and benefits associated with the proposed amendments. Commenters should submit estimates for any costs and benefits, together with any supporting empirical evidence.

#### IV. Paperwork Reduction Act

The proposed amendments are subject to the Paperwork Reduction Act and will be submitted to the Office of Management and Budget for its review.

#### V. Statutory Authority

The Commission is proposing amendments to rule 7 pursuant to sections 2(a)(3), 2(a)(4) and 20(a) [15 U.S.C. 79b(a)(4), 79b(a)(4), 79t(a)] of the Act; amendments to rule 26 pursuant to section 20(a) [15 U.S.C. 79t(a)] of the Act; amendments to rule 27 pursuant to section 20(a) [15 U.S.C. 79t(a)] of the Act; amendments to rule 29 pursuant to section 14, 15 and 20(a) [15 U.S.C. 79n, 79o, 79t(a)] of the Act; amendments to rule 40(a)(5) and Form U5S pursuant to sections 3(d), 5(c), 9(c)(3), 14 and 20(a) [15 U.S.C. 79c(d), 79e(c), 79i(c)(3), 79n, 79t(a)] of the Act; amendments to rule 41(c) pursuant to section 3(d) [15 U.S.C. 79c(d)] of the Act; amendments to rule 42 pursuant to section 9(c)(3), 12(c) and 20(a) [15 U.S.C. 79i(c)(3), 79l(c), 79t(a)] of the Act; amendments to rule 43(b) pursuant to sections 6(b), 12(d), 12(f) and 27(a) [15 U.S.C. 79f(b), 79l(d), 79l(f), 79aa(a)] of the Act; amendments to rule 44(b) pursuant to section 12(d) [15 U.S.C. 79l(d)] of the Act; amendments to rule 49 pursuant to 20(a) [15 U.S.C. 79t(a)] of the Act; rescission of rule 50 pursuant to section 20(a) [15 U.S.C. 79t(a)] of the Act; amendments to rule 62 pursuant to section 20(a) [15 U.S.C. 79t(a)] of the Act; amendments to rule 63 pursuant to section 20(a) [15 U.S.C. 79t(a)] of the Act; amendments to rule 65 pursuant to sections 12(e) and 20(a) [15 U.S.C. 79l(e), 79t(a)] of the Act; amendments to rule 71(b) and Forms U-12(I)-A and U-12(I)-B pursuant to section 12(i) and 20(a) [15 U.S.C. 79l(i), 79t(a)] of the Act; amendments to rule 83(d) pursuant to section 13(b) [15 U.S.C. 79m(b)] of the Act and amendments to Form U-13-60 pursuant to sections 14, 15 and 20(a) [15 U.S.C. 79n, 79o, 79t(a)] of the Act. The authority citations for these actions precede the text of the actions.

#### VI. Text of Proposed Rule Amendments

##### List of Subjects in 17 CFR Parts 250 and 259

##### Utilities.

For the reasons set out in the preamble, the Commission is proposing to amend chapter II, title 17 of the Code of Federal Regulations as follows:

#### PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

1. The authority citation for part 250 continues to read, in part, as follows:

<sup>43</sup> See Holding Co. Act Release No. 1858 (Dec. 29, 1939) (Adopting Form U-13-60); Holding Co. Act Release No. 21447 (Feb. 22, 1980) (amendment). The Uniform System of Accounts are found in 17 CFR 256.

<sup>44</sup> 17 CFR 250.93, 250.94. Holding Co. Act Release No. 229 (Aug. 1, 1936) (adopting precursor to rule 93); Holding Co. Act Release No. 513 (Jan. 8, 1937) (adopting precursor to rule 94); Holding Co. Act Release No. 2694 (Apr. 21, 1941) (adopting rules 93 and 94).

<sup>45</sup> See 18 CFR 101—Uniform System of Accounts Prescribed For Public Utilities and Licensees Subject to the Provisions of the Federal Power Act; 18 CFR 201—Uniform System of Accounts Prescribed For Natural Gas Companies Subject to the Provisions of the Natural Gas Act.

<sup>46</sup> See Holding Co. Act Release No. 20910 (Feb. 2, 1979) (amending rule 93 and 17 CFR 256); Holding Company Act Release No. 21447 (Feb. 22, 1980) (amending rule 94 and Form U-13-60).

<sup>47</sup> See, e.g., 17 CFR 250.7, 250.26, 250.27, 250.49, 250.63.



Authority: 15 U.S.C. 79c, 79f(b), 79i(c)(3), 79t, unless otherwise noted.

§§ 250.7, 250.26 and 250.29 [Amended]

2. The authority citations at the end of the following sections are removed: §§ 250.7, 250.26, and 250.29.

3. Section 250.7 is amended by removing "Atomic Energy Commission" in paragraphs (b)(2)(i) and (b)(3)(i) and adding in its place "Nuclear Regulatory Commission" and by revising paragraph (a) to read as follows:

§ 250.7 Companies deemed not to be electric or gas utility companies.

(a) Any company which is primarily engaged in one or more businesses other than the business of any electric or gas utility company, shall not be deemed an electric or gas utility company within the meaning of section 2(a)(3) or section 2(a)(4) of the Act if the gross sales of electric energy, or of natural or manufactured gas distributed at retail by means of the facilities owned or operated by such company, did not exceed an annual average amount of \$5,000,000 over the preceding three calendar years. There may be excluded from the gross sales specified:

- (1) Sales of electric energy or natural or manufactured gas tenants or employees of the operating company for their own use and not for resale; and
- (2) Sales of gas to industrial consumers.

§ 250.26 [Amended]

4. Section 250.26 is amended by removing "Federal Power Commission" in the two places it appears in paragraph (b)(2), and adding in both places "Federal Energy Regulatory Commission".

§ 250.27 [Amended]

5. Section 250.27 is amended by removing "Federal Power Commission" in the two places it appears in paragraph (a), and adding in both places "Federal Energy Regulatory Commission".

6. Section 250.29 is revised to read as follows:

§ 250.29 Filing of reports to State Commissions.

A copy of each annual report submitted by any registered holding company or any subsidiary thereof to a State Commission covering operations not reported to the Federal Energy Regulatory Commission shall be filed with the Securities and Exchange Commission not later than ten days after such submission.

7. Section 250.40 is amended by revising paragraph (a)(5) to read as follows:

§ 250.40 Exemption of certain acquisitions from nonaffiliates.

(a) \* \* \*

(5) *Securities of local enterprises.* Any security issued by an industrial or other nonutility enterprise located in the service territory of the acquiring public-utility company or, if the acquiring company is not a public-utility company, in the service territory of the registered holding company system: *Provided,*

(i) In the case of securities of industrial development companies organized for the purpose of, and in accordance with a State law specifically relating to, promoting the development of business and industry in such state, the exemption shall apply without limit, and

(ii) In all other cases, the exemption under this section shall apply so long as the total cost of all such acquisitions does not exceed \$1 million during any calendar year.

In no event, however, will the above exemption apply where, by reason of such acquisition, the acquiring company would become an affiliate of the issuer.

8. Section 250.41 is amended by revising paragraph (c) to read as follows:

§ 250.41 Exemption of public utility subsidiaries with respect to limited acquisition of utility assets.

(c) *Limit in amount.* The total consideration paid for utility assets acquired pursuant to the exemption granted by this section does not exceed in any calendar year the lesser of \$5 million or five percent of the gross annual revenues of the acquiring company derived from its operations as a public-utility company during the preceding calendar year.

9. Section 250.42 is revised to read as follows:

§ 250.42 Acquisition, retirement and redemption of securities by the issuer thereof.

A registered holding company or its subsidiary company may acquire, retire or redeem any security of which it is the issuer (or which it has assumed or guaranteed) without the need for prior Commission approval under sections 9(a), 10 and 12(c) of the Act. *Provided,* This section shall not apply to a transaction by a registered holding company or its subsidiary company with

an associate company, an affiliate, or an affiliate of an associate company.

10. Section 250.43 is amended by revising paragraph (b) to read as follows:

§ 250.43 Sales to affiliates.

(b) *Exception.* The foregoing requirement shall not apply to any sale of securities or utility assets or any other interest in any business up to a total aggregate consideration of \$5,000,000 during any calendar year if the acquisition by the vendee is not subject to the approval of the Commission.

11. Section 250.44 is amended by revising paragraph (b) to read as follows:

§ 250.44 Sales of securities and assets.

(b) *Exception.* The foregoing requirement shall not apply to any sale of securities or of utility assets up to a total aggregate consideration of \$5,000,000 during any calendar year if the acquisition by the vendee is not subject to the approval of the Commission.

§ 250.49 [Amended]

12. Section 250.49 is amended by revising the phrase "section 208 of Chapter X of the Bankruptcy Act, as amended (52 Stat. 894; 11 U.S.C. 608)" in paragraph (c) to read "section 1109(a) of Chapter 11 of the Bankruptcy Code (11 U.S.C. 1109(a))" and removing the clauses "section 106(13) of said Chapter X (52 Stat. 883; 11 U.S.C. 506, or of" and "section 106.(13) of said Chapter X or of" where they appear in paragraph (c).

§ 250.50 [Removed and Reserved]

13. Section 250.50 is removed and reserved.

§ 250.62 [Amended]

14. Section 250.62 is amended by removing the phrase "or by a confirmed telegram" in paragraph (d)(2), and removing the phrase "or telegraphic" in paragraph (d)(3).

§ 250.63 [Amended]

15. Section 250.62 is amended by revising the phrase "section 208 of Chapter X of the Bankruptcy Act as amended (52 Stat. 894; 11 U.S.C. 608)" to read "section 1109(a) of Chapter 11 of the Bankruptcy Code (11 U.S.C. 1109(a))".

16. Section 250.65 is amended by revising paragraph (b)(2) to read as follows:



**§ 250.65 Expenditures in connection with solicitation of proxies.**

\* \* \*

(b) *Exceptions.* \* \* \*

(2) Other expenditures not in excess of \$100,000 during any one calendar year.

\* \* \*

17. Section 250.71 is amended by revising the heading and paragraph (b) to read as follows:

**§ 250.71 Statements to be filed pursuant to section 12(i).**

\* \* \*

(b) *Advance statement.* An advance statement, covering anticipated activity for the remainder of the present calendar year, and the next two calendar years, may be filed on Form U-12(I)-B by any person (whether or not the compensation of such person has been fixed in advance) employed or retained by any registered holding company, or any subsidiary company thereof, to present, advocate, or oppose any matter affecting any registered holding company or any subsidiary company thereof, before the Congress or any Member or committee thereof, or before the Commission or Federal Energy Regulatory Commission, or any member, officer, or employee of either such commission, which is expected to involve a series of appearances or activities, if such employment or retainer does not contemplate any expenses other than ordinary personal, traveling or sustenance expenses, stationery, postage, telephone, telecopier and telegraphic service, stenographic and clerical assistance, expenditures for the printing of briefs or other documents to be submitted to any agencies specified in section 12(i) of the Act, and similar items.

\* \* \*

18. Section 250.83 is amended by revising paragraph (d) to read as follows:

**§ 250.83 Exemption in the case of transactions with foreign associates.**

\* \* \*

(d) Any subsidiary company of a registered holding company may perform service, sales, or construction contracts for any associate company which does not derive, directly or indirectly, any material part of its income from sources within the United States and which is not a public-utility company operating within the United States, without the need for prior approval of the Commission under the standards of section 13(b) of the Act and the rules and regulations thereunder, so long as the consideration to be paid by the foreign associate company under

such contracts is not less than the cost of the service, sales, or construction to the subsidiary company rendering such services.

**PART 259—FORMS PRESCRIBED UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935**

19. The authority citation for part 259 is revised to read as follows:

Authority: 15 U.S.C. 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, 79r.

**Subpart A—Forms for Registration and Annual Supplements**

20. Form U5S (referenced in § 259.5s) is amended by revising paragraph 1 of Item 5 to read as follows:

Note: These forms will not appear in the Code of Federal Regulations.

**§ 259.5s. Form U5S (§ 259.5s), for annual reports filed under section 5(c) of the Act.**

\* \* \*

**Item 5. Investments in Securities of Nonsystem Companies**

\* \* \*

1. Aggregate amount of investments in persons operating in the retail service area of the owner, or of its subsidiaries. State the number of persons included and describe generally the kind of persons included.

\* \* \*

**Subpart C—Forms for Statements and Reports**

21. Form U-12(I)-A (referenced in § 259.212a) is amended by revising paragraph (b) of rule U-71 to read as follows:

**§ 259.212a Form U-12(I)-A, for statement of activity within scope of section 12(i) of the Act pursuant to Rule 71(a) (§ 250.71(a) of this chapter).**

\* \* \*

**Rule U-71. Statements To Be Filed Pursuant to Section 12(i)**

\* \* \*

(b) *Advance Statement.* An advance statement, covering anticipated activity for the remainder of the present calendar year and the next two calendar years, may be filed on Form U-12(I)-B by any person (whether or not the compensation of such person has been fixed in advance) employed or retained by any registered holding company, or any subsidiary company thereof, to present, advocate, or oppose any matter affecting any registered holding company or any subsidiary company thereof, before the Congress or any Member or committee thereof, or before the Commission or Federal Energy

Regulatory Commission, or any member, officer, or employee of either such commission, which is expected to involve a series of appearances or activities, if such employment or retainer does not contemplate any expenses other than ordinary personal, traveling or sustenance expenses, stationery, postage, telephone, telecopier and telegraphic service, stenographic and clerical assistance, expenditures for the printing of briefs or other documents to be submitted to any agencies specified in section 12(i) of the Act, and similar items.

\* \* \*

22. Form U-12(I)-B (referenced in § 259.212b) is amended by revising the heading, revising the phrase "during the prior year and to be received during the calendar year" to read "during the current year and estimated to be received over the next two calendar years" in paragraph 5(a) and removing the phrase "during prior year" in column (a) of the table in paragraph 5(a), revising paragraph (b) of rule U-71, revising the General Instruction to Form U-12(I)-B, removing the phrase "at end of year" in Item 6 of the General Instruction, to read as follows:

**§ 259.212b Form U-12(I)-B, for advance statement of activity within scope of section 12(i) of the Act pursuant to Rule 71(b) (§ 250.71(b) of this chapter).****Form U-12(I)-B (Three-Year Statement)**

Securities and Exchange Commission, Washington, DC, Three year period ending 19\_\_\_\_

**Form U-12(I)-B (Three Year Statement)**

\* \* \*

**Rule U-71. Statements To Be Filed Pursuant to Section 12(i)**

\* \* \*

(b) *Advance Statement.* An advance statement, covering anticipated activity for the remainder of the present calendar year and the next two calendar years, may be filed on Form U-12(I)-B by any person (whether or not the compensation of such person has been fixed in advance) employed or retained by any registered holding company, or any subsidiary company thereof, to present, advocate, or oppose any matter affecting any registered holding company or any subsidiary company thereof, before the Congress or any Member or committee thereof, or before the Commission or Federal Energy Regulatory Commission, or any member, officer, or employee of either such commission, which is expected to involve a series of appearances or



activities, if such employment or retainer does not contemplate any expenses other than ordinary personal, traveling or sustenance expenses, stationery, postage, telephone, telecopier and telegraphic service, stenographic and clerical assistance, expenditures for the printing of briefs or other documents to be submitted to any agencies specified in section 12(i) of the Act, and similar items.

\* \* \* \* \*

#### Instructions

**General Instruction.**—Advance Statement on this form shall continue in effect until January 30 of the year following the end of the three-year period covered by the advance statement, unless and except as previously supplemented or renewed. Supplementary statements during the three-year period may be filed in the event of material changes such as information called for by items 1 through 6. Changes of rank or salary within the organization would not ordinarily be deemed material.

\* \* \* \* \*

#### Subpart D—Forms for Periodic Accounting Reports

23. Form U-13-60 (referenced in § 259.313) is amended by adding instruction 12, reading as follows:

§ 259.313 Form U-13-60 (§ 259.313), for annual reports pursuant to rule 94 (§ 250.94 of this chapter) by mutual and subsidiary service companies required by section 13 of the Act.

\* \* \* \* \*

#### Instructions for Use of Form U-13-60

\* \* \* \* \*

12. *Use of Accounts of the Federal Energy Regulatory Commission.* The service company shall prepare, and attach where appropriate, a separate schedule or analysis of accounts consistent with the uniform system of accounts prescribed for use by the service company in determining the cost of its services to associate companies under the requirements of the Federal Energy Regulatory Commission as set forth in 18 CFR parts 101 and 201.

\* \* \* \* \*

Dated: November 4, 1992.

By the Commission.

Margaret H. McFarland,  
Deputy Secretary.

#### Exhibit A—Regulatory Flexibility Act Certification

I, Richard C. Breeden, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C.

605(b), that the proposed rescission of rule 50 under the Public Utility Holding Company Act of 1935 (the "1935 Act"), and the proposed amendments to rules 26, 27, 29, 40(a)(5), 41(c), 42(b), 43(b), 44(b), 49, 62, 63, 65(b)(2), 71(b), 83(d), and Forms U5S, U-12(I)-A, U-12(I)-B and U-13-60, under the 1935 Act, concerning exemptions for certain acquisitions and sales, investments in nonutility enterprises, and the provision of services to foreign associate companies by companies in a registered holding company system, will not, if promulgated, have a significant economic impact on a substantial number of small entities. The reason for this certification is that the primary effect of the proposals is on registered holding companies and their subsidiaries. None of the holding companies presently registered under the 1935 Act is a small entity for purposes of the Regulatory Flexibility Act.

Dated: November 3, 1992.

Richard C. Breeden,  
Chairman.

[FR Doc. 92-27310 Filed 11-13-92; 8:45 am]

BILLING CODE 8010-01-M

#### DEPARTMENT OF THE INTERIOR

##### Office of Surface Mining Reclamation and Enforcement

##### 30 CFR Part 944

##### Utah Permanent Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** OSM is announcing the receipt of a proposed amendment to the Utah permanent regulatory program (hereinafter, the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of changes to provisions of the Utah rules pertaining to the definitions of the terms "affected area," "road," and "public road" found at R645-100-200. The amendment is intended to revise the Utah program to be consistent with the corresponding Federal regulations and improve operational efficiency.

This notice sets forth the times and locations that the Utah program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments

on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

**DATES:** Written comments must be received by 4 p.m., m.s.t. December 16, 1992. If requested, a public hearing on the proposed amendment will be held on December 11, 1992. Requests to present oral testimony at the hearing must be received by 4 p.m., m.s.t. on December 1, 1992.

**ADDRESSES:** Written comments should be mailed or hand delivered to Robert H. Hagen at the address listed below.

Copies of the Utah program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue NW., suite 1200, Albuquerque, NM 87102, Telephone: (505) 766-1486.

Utah Division of Oil, Gas and Mining, 355 West North Temple, 3 Triad Center, suite 350, Salt Lake City, UT 84180-1203, Telephone: (801) 538-5340.

**FOR FURTHER INFORMATION CONTACT:** Robert H. Hagen, Telephone: (505) 766-1486.

#### SUPPLEMENTARY INFORMATION:

##### I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. General background information on the Utah program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program can be found in the January 21, 1981, *Federal Register* (46 FR 5899). Subsequent actions concerning Utah's program and program amendments can be found at 30 CFR 944.15, 944.16, and 944.30.

##### II. Proposed Amendment

By letter dated September 17, 1992, Utah submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. UT-782). Utah submitted the proposed amendment in response to a September 4, 1992, settlement agreement between OSM and the Utah Division of Oil, Gas and Mining (administrative record No. UT-778) and in response to the required program amendments at 30 CFR 944.16



(n) and (o). Utah proposes revisions to the Utah Coal Mining Rules at R645-100-200 pertaining to the definitions of the terms "affected area," "road," and "public road." The text of the amendment is quoted below. The italicized language represents wording that is being added to the existing rule, and the capitalized language in brackets represents wording that is being deleted.

"Affected area" means any land or water surface area which is used to facilitate, or is physically altered by, *surface* coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which *surface* coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to *surface* coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, *surface* coal mining and reclamation operations [EXCEPT AS PROVIDED IN THIS DEFINITION]; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property material on the surface resulting from, or incident to, *surface* coal mining and reclamation operations; and the area located above underground workings. *The affected area shall include every road used for purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road (a) was designated as a public road pursuant to the laws of the jurisdiction in which it is located; (b) is maintained with public funds, and constructed, in a manner similar to other public roads of the same classification within the jurisdiction; and (c) there is substantial (more than incidental) public use.* Editorial Note: The definition of "Affected area," insofar, as it excludes roads which are included in the definition of "Surface coal mining operations," was suspended at 51 FR 41960, Nov. 20, 1986.

"Road" means a surface right-of-way for purposes of travel by land vehicles used in [COAL EXPLORATION OR] *surface* coal mining and reclamation operations or *coal* exploration. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface. The term includes access and haulroads constructed, used, reconstructed, improved, or maintained for use in [COAL EXPLORATION, OR WITHIN THE AFFECTED AREA OF] *surface* coal mining and reclamation operations or *coal* exploration, including use by coal hauling vehicles [LEADING] to and from transfer, processing, or storage areas. The term does not include [ROADS] *ramps and routes of travel within the immediate mining [PIT] area or within spoil or coal mine waste disposal areas.*

"Public road," for the purpose of part R645-103-100, means a road (a) which has been designated as a public road pursuant to the

laws of the jurisdiction in which it is located[.]; (b) which is maintained with public funds in a manner similar to other public roads of the same classification within the jurisdiction[. AND]; (c) *for which there is substantial (more than incidental) public use; and (d) which meets road construction standards for other public roads of the same classification in the local jurisdiction.*

### III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Utah program.

#### Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

#### Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.s.t. on December 1, 1992. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

#### Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may

request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and; if possible, notices of meeting will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the administrative record.

### IV. Procedural Determinations

#### Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

#### Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of the Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA [30 U.S.C. 1253 and 1255] and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731 and 732 have been met.

#### National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(c) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

#### Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*



### Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

### List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 9, 1992.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 92-27725 Filed 11-13-92; 8:45 am]

BILLING CODE 4310-05-M

### FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 1, 2, 88, 90 and 94

[Private Radio Docket 92-235; FCC 92-469]

### Revision of Regulations on the Private Land Mobile Radio Services; Modification of Policies

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission has adopted a Notice of Proposed Rule Making proposing major policy changes for the private land mobile radio services, particularly for the bands below 512 MHz. The Notice of Proposed Rule Making proposes to require that spectrum efficient technology be adopted by new and existing users, proposes an option for channel exclusivity in the 150-174 MHz and 450-470 MHz bands, proposes consolidation of the private land mobile radio services, and completely rewrites the rules governing the private land mobile radio services. The Notice has three major objectives: To create more mobile communications capacity, to protect all existing users, and to provide for a

smooth and least cost transition to more efficient technologies.

**DATES:** Comments must be filed on or before February 26, 1993, and reply comments must be filed on or before April 14, 1993.

**ADDRESSES:** Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Doron Fertig, Private Radio Bureau, Land Mobile and Microwave Division, Policy and Planning Branch, (202) 632-6497.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, PR Docket No. 92-235, adopted October 8, 1992, and released November 6, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20037, (202) 452-1422.

### Summary of Notice of Proposed Rule Making

1. The Notice has three major objectives: To create more mobile communications capacity, to protect all existing users, and to provide for a smooth and least cost transition to more efficient technologies. To accomplish these objectives, the Notice proposes eight major changes. First, it would require all private land mobile systems operating on frequencies between 72 and 512 MHz to convert to narrowband technology. To ease the transition to narrowband technology, the Notice proposes a two stage process beginning in 1996 that provides many years for existing systems to fully convert to narrowband technology. In the 450-470 MHz and 470-512 MHz bands, stage one would require existing users to reduce their bandwidth from 25 kHz to 12.5 kHz. This would result in the creation of two 6.25 kHz narrowband channels in addition to each 12.5 kHz channel. Stage two would require existing users to convert their 12.5 kHz assignment into two narrowband channels. In the 150-174 MHz band, stage one would require existing users to reduce their bandwidth to 15 kHz. This would eliminate the overlap of adjacent channels. Stage 2 would split these 15 kHz channels three for one.

2. Second, the Notice proposes an option for licensees to obtain exclusive use of channels between 150 and 470 MHz. The exclusivity option would

employ marketplace forces and incentives to enable licensees to negotiate with existing licensees to convert channels from shared to exclusive use. No existing licensee would be forcibly displaced under this plan.

3. Third, the proposed rules would provide technical flexibility in a regulatory structure designed to maximize the opportunities to use advanced technologies, such as trucking and digital modulations.

4. Fourth, the Notice proposes to reduce permissible power levels in the 150-174 MHz and 450-470 MHz bands, establishing an environment for more efficient co-channel reuse. Flexibility to serve wider areas would be maintained by continuing to permit multiple sites.

5. Fifth, 258 channel pairs in the 150-162 MHz band would be designated for wide-area, highly spectrum efficient operations.

6. Sixth, the Notice proposes to eliminate numerous outdated or burdensome regulations.

7. Seventh, the Notice proposes some consolidation of radio services. The Notice states consolidation is essential to obtain the full benefits of the proposed technical and policy changes.

8. Finally, the Notice proposes replacing part 90 of the Commission's rules with a new part 88. The proposed part 88 is generally simpler and clearer than part 90. The Commission invites all interested parties to comment on the questions raised in this Notice of Proposed Rule Making.

### Initial Regulatory Flexibility Analysis

#### A. Reason for Action

9. The Commission proposes to: (1) Create new channels by splitting existing channels between 72 and 512 MHz; (2) create a mechanism giving applicants the ability to obtain channel exclusivity in the 150-174 MHz bands; (3) allocate a block of channels for innovative shared use; (4) provide users technical flexibility to convert to higher technology; (5) consolidate the 19 Private Land Mobile Radio services; (6) reduce power and antenna height to increase frequency reuse; and (7) substitute a new part 88 for part 90. These actions will reduce congestion, meet future communications capacity needs and generally permit, facilitate and encourage licensees to be spectrum efficient. These proposals will not unduly burden the public or increase administrative costs, and would improve government efficiency. The specific rules also eliminate certain reporting



requirements. The new part 88 will be much more user friendly than part 90.

#### B. Objectives

10. We seek to reexamine our general rules and policies for private land mobile radio use in the bands below 800 MHz in order to improve spectrum efficiency, and thus meet the varied communications needs of industry and the public safety community, without excessively burdening existing licensees or increasing administrative costs to the Commission. Overall, these proposed rules would increase efficiency by industry and the public safety community.

#### C. Legal Basis

11. The proposed action is authorized under section 4(1), 303(g), 303(r), and 331(a) of the Act, 47 U.S.C. 154(i), 303(g), 303(r), and 332(a) (1988).

#### D. Reporting, Recordkeeping and Other Compliance Requirements

12. Licensees seeking exclusivity would have to file an application indicating that certain co-channel licensees have granted concurrence to freeze licensing on a certain frequency in a certain geographic area. Type acceptance of narrowband transmitters is needed. The channel split requires bandwidth to be reduced on existing equipment by certain deadlines. There are also proposed incentives to split channels sooner than required. Overall, after a short adjustment period resulting in some increased compliance activity, interference and other complaints should be significantly reduced.

#### E. Federal Rules That Overlap, Duplicate or Conflict With These Rules

13. None.

#### F. Description, Potential Impact, and Number of Small Entities Involved

14. Small entities would be required to make minor adjustments to their existing equipment. The cost of these requirements would vary from nothing to over \$100 per transmitter. Most of the adjustments would be made in-house or by small two-way mobile service shops. Eventually some equipment will be replaced sooner than without these rules, although every licensee should have sufficient time to amortize equipment. Future equipment should be designed to be usable for the indefinite future. Although the Commission proposes no rule preventing anyone from continuing to operate indefinitely on their current frequency, many small entities may be reimbursed by other licensees for giving up part or all of their current assignment. These adjustments

will reduce interference to all licensees and expand capacity eventually by over 300 percent. That extra capacity will allow existing entities to expand and new entities to meet future mobile communications needs. In total these actions will permit approximately 20 to 30 million additional transmitters to be licensed. We estimate that on average a transmitter and associated hardware and software will be valued at over \$1000. Thus, these proposed rules would cost the public approximately \$500 million, but produce \$20 to \$40 billion in additional equipment sales. Overall, approximately 100,000 currently licensed small entities would be affected both positively and negatively, and approximately 300,000 small entities would be strictly positively affected in the future.

#### G. Any Significant Alternatives Minimizing the Impact on Small Entities Consistent With the Stated Objectives

15. None

#### List of Subjects

##### 47 CFR Part 1

Private land mobile radio, Radio.

##### 47 CFR Part 2

Private land mobile radio, Radio.

##### 47 CFR Part 88

Private land mobile radio, Radio.

##### 47 CFR Part 90

Private land mobile radio, Radio.

##### 47 CFR Part 94

Private operational-fixed microwave, Radio.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-27606 Filed 11-13-92; 8:45 am]

BILLING CODE 6712-01-M

## DEPARTMENT OF DEFENSE

### 48 CFR Part 209 and Appendix H

#### Defense Federal Acquisition Regulation Supplement; Debarment and Suspension Procedures

**AGENCY:** Department of Defense (DOD).

**ACTION:** Proposed rule and request for comments.

**SUMMARY:** The Defense Acquisition Regulations (DAR) Council is proposing to amend the Defense FAR Supplement to provide uniform debarment and suspension procedures to be followed by DOD debarring officials.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before December 16, 1992, to be considered in the formulation of the final rule.

**ADDRESSES:** Interested parties should submit written comments to: Defense Acquisition Regulations System, ATTN: Ms. Valorie R. Lee, OUSD(A), 3062 Defense Pentagon, Washington, DC 20301-3062. FAX No. (703) 697-9845. Please cite DAR Case 92-D007 in all correspondence related to this issue.

**FOR FURTHER INFORMATION CONTACT:** Ms. Valorie R. Lee, Procurement Analyst, DAR Council, (703) 697-7266, FAX No. (703) 697-9845.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

The Under Secretary of Defense (Acquisition) directed that a working group be established to draft revisions to DOD regulations to ensure that the Department of Defense's suspension and debarment practices are being applied uniformly. This proposed rule provides uniform debarment and suspension procedures to be used by all DOD debarring officials.

##### B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because contractors availing themselves of the opportunity to present matters in opposition to suspension or debarment proceedings need not engage legal representation or submit written material. With respect to participation in fact-finding hearings, such hearings are exceedingly rare as a practical matter. The proposed rule applies to both large and small businesses. An initial Regulatory Flexibility Analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 92-610 in all correspondence.

##### C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) does not apply because this proposed rule imposes no information collection requirement.



## List of Subjects in 48 CFR Parts 209 and Appendix H.

### Government procurement.

Claudia L. Naugle,  
Executive Editor, Defense Acquisition  
Regulations System.

Therefore, it is proposed that 48 CFR part 209 be amended and appendix H be added to read as follows:

1. The authority citation for 48 CFR part 209 is revised to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, Defense FAR Supplement 201.301.

## PART 209—CONTRACTOR QUALIFICATIONS

2. Section 209.402 is added to read as follows:

### 209.402 Policy.

(d) The department or agency shall provide a copy of the Debarment and Suspension Procedures at DFARS Appendix H to contractors at the time of their suspension or when they are proposed for debarment, and upon request to other interested parties.

3. Appendix H to Chapter 2 is added to read as follows:

### Appendix H—Debarment and Suspension Procedures

Sec.

- H-100 Scope
- H-101 Notification
- H-102 Nature of proceeding
- H-103 Presentation of matters in opposition
- H-104 Fact-finding
- H-105 Timing requirements
- H-106 Subsequent to fact-finding

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, Defense FAR Supplement 201.301.

### H-100 Scope.

This appendix provides uniform debarment and suspension procedures to be followed by all debarring and suspending officials.

### H-101 Notification.

Contractors will be notified of the proposed debarment or suspension in accordance with FAR 9.406-3 or 9.407-3. A copy of the record which formed the basis for the decision by the debarring and suspending official is made available to the contractor. If there is a reason to withhold from the contractor any portion of the record, the contractor will be informed of what is withheld and the reasons for such withholding.

### H-102 Nature of proceeding.

There are two distinct proceedings which may be involved in the suspension or debarment process. The first is the presentation of matters in opposition to the suspension or proposed debarment by the contractor. The second is fact-finding, which occurs only in cases in which the contractor's presentation of matters in opposition raises a genuine dispute over one or more material facts. In a suspension action based upon an

indictment or in a proposed debarment action based upon a conviction or civil judgment, there is no fact-finding proceeding, as the fact of the indictment, conviction or civil judgment is sufficient basis for the proposed action. To the extent that the proposed action stems from the contractor's affiliation with an individual or firm indicted or convicted, fact-finding is permitted if a genuine dispute of fact is raised as to the question of affiliation.

### H-103 Presentation of matters in opposition.

(a) In accordance with FAR 9.406-3(c) and 9.407-3(c), matters in opposition may be presented in person, in writing, or through a representative. Matters in opposition may be presented through any combination of the foregoing methods, but if a contractor desires to present matters in person or through a representative, any written material should be delivered at least 5 working days in advance of the presentation. Usually, all matters in opposition are presented in a single proceeding. A contractor who becomes aware of a pending indictment or other wrongdoing that the contractor believes may lead to suspension or debarment action may contact the debarring and suspending official.

(b) An in-person presentation is an informal meeting, nonadversarial in nature. The debarring and suspending official and/or other agency representatives may ask questions of the contractor or its representative making the presentation.

(c) In accordance with FAR 9.406-3(c) and 9.407-3(c), the contractor may submit matters in opposition within 30 days from receipt of the notice of suspension or proposed debarment.

(d) The opportunity to present matters in opposition to debarment includes the opportunity to present matters concerning the duration of the debarment.

### H-104 Fact-finding.

(a) The debarring and suspending official will determine whether the contractor's presentation has raised a genuine dispute of material fact(s). If the debarring and suspending official has decided against debarment or continued suspension, or the provisions of FAR 9.4 preclude fact-finding, no fact-finding will be conducted. If the debarring and suspending official has determined a genuine dispute of material fact(s) exists, a designated fact-finder will conduct the fact-finding proceeding.

(b) The designated fact-finder will establish the date for a fact-finding proceeding, normally to be held within 45 working days of the contractor's presentation of matters in opposition. An official record will be made of the fact-finding proceeding.

(c) The Government's representative and the contractor will have an opportunity to present evidence relevant to the facts at issue. The contractor may appear in person or through a representative in the fact-finding proceeding.

(d) Neither the Federal rules of evidence nor the Federal rules of civil procedures govern fact-finding. Hearsay evidence may be presented and will be given appropriate weight by the fact-finder.

(e) *Witnesses may testify in person.* Witnesses will be reminded of the official nature of the proceeding and that the testimony given is subject to perjury laws. Witnesses are subject to cross-examination.

### H-105 Timing requirements.

All timing requirements set forth in these procedures may be extended by the debarring and suspending official for good cause.

### H-106 Subsequent to fact-finding.

(a) Written findings of fact will be prepared by the fact-finder as mandated by FAR 9.406-3(d)(2)(i) and 9.407-3(d)(2)(i).

(b) The fact-finder will determine the disputed fact(s) by a preponderance of the evidence. A copy of the findings of fact will be provided to the debarring and suspending official, the Government's representative and the contractor.

(c) The debarring and suspending official will determine whether to continue the suspension or to debar the contractor based upon the entire administrative record, including the findings of fact.

(d) Prompt written notice of the debarring and suspending official's decision will be sent to the contractor and any affiliates involved, in compliance with FAR 9.406-3(e) and 9.407-3(d)(4).

[FR Doc. 92-27613 Filed 11-13-92; 8:45 am]

BILLING CODE 3810-01-M

## GENERAL SERVICES ADMINISTRATION

### 48 CFR Parts 538 and 552

[GSAR Notice 5-336]

### General Services Administration Acquisition Regulation, Multiple Award Schedule, Contractors' Submission and Distribution of Authorized GSA Schedule Pricelists

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Proposed rule.

SUMMARY: This notice invites comments on a proposed change to the General Services Administration Acquisition Regulation (GSAR) that would prescribe the clause, "Submission and Distribution of Authorized GSA Schedule Pricelists," and also would add the text of the new clause.

DATES: Comments are due in writing on or before December 16, 1992.

ADDRESSES: Comments should be addressed to Ms. Marjorie Asby, Office of GSA Acquisition Policy, 18th & F Streets, NW., room 4026, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Les Davison, Office of GSA Acquisition Policy, (202) 501-1224.



**SUPPLEMENTARY INFORMATION:****A. Background**

Currently, General Services Administration (GSA) Multiple Award Schedule (MAS) contractors submit two paper copies of their authorized GSA schedule pricelist to the Contracting Officer after award, and also distribute paper copies of that pricelist to Federal agencies.

Federal agencies use contractors' GSA pricelists to evaluate and order products from MAS contracts. Contractors' distribution of GSA pricelists to agencies mirrors the standard business practice of sending commercial catalogs to prospective customers.

Under the proposed clause, MAS contractors will continue to submit their paper pricelist to the Contracting Officer, but they will also submit one copy of the pricelist in an electronic media. That electronic copy will allow entry of a contractor's pricelist into the GSA MAS electronic data base, which is accessible to all Federal agencies and authorized GSA schedule contract users. The duplicative submission of both paper and electronic copies is temporary; it is GSA's long-range goal to eliminate the requirement for submission of paper copies of the pricelists.

**B. Executive Order 12291**

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this proposed rule.

**C. Regulatory Flexibility Act**

An initial regulatory flexibility analysis has been prepared and submitted to the Acting Chief Counsel for Advocacy of the Small Business Administration. Copies of the initial regulatory flexibility analysis are available from the office identified above. The initial regulatory analysis indicates that the proposed rule will affect contractors, including small businesses, that are awarded contracts under GSA's Multiple Award Schedule program. Over the years, approximately seventy percent of MAS contractors have been small businesses. Based on the number of MAS contracts awarded in 1991, it is estimated that 2,300 small businesses will be impacted by the new rule.

**D. Paperwork Reduction Act**

The "Submission and Distribution of Authorized GSA Schedule Pricelists" clause contains an information

collection requirement which has been submitted to the OMB for approval. Comments on the information collection requirement may be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Washington, DC 20503. The title of the information collection is, "GSAR 538, Submission and Distribution of Authorized GSA Schedule Pricelists." Under current procedures, MAS contractors submit two paper copies of their authorized GSA schedule pricelist to the Contracting Officer, and distribute additional copies to Federal agency users. The contractors' distribution of pricelists to Federal agencies follows standard commercial practice of sending pricelists to potential customers. The authorized GSA schedule pricelists are used by Government agencies to evaluate and consider particular items for acquisition, and to place and administer orders.

This proposed GSAR clause continues to existing procedures for submission and distribution of paper pricelists, but adds a requirement to submit the same pricelist on an electronic medium. The estimated annual burden for submission and distribution of paper pricelists is 40 hours per contractor (130,000 total hours). Twenty-five percent of current MAS contractors are estimated to already have their pricelists on an electronic database. For those, the additional burden of submitting an electronic pricelist is estimated at 2 hours. For other contractors, the estimated burden to submit an electronic pricelist is 20 hours. For electronic submission, then, the estimated annual burden is 48,584 hours.

In total, the estimated additional annual burden for paper submission, paper distribution, and electronic submission for 3250 MAS contractors is 178,584 hours.

**List of Subjects in 48 CFR Parts 538 and 552**

Government procurement.

Accordingly, it is proposed to amend 48 CFR parts 538 and 552 as follows:

1. The authority citation for 48 CFR parts 538 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

**PART 538—GSA SCHEDULE CONTRACTING**

2. Section 538.203-71 is amended by adding paragraph (e) to read as follows:

**538.203-71 Contract clauses.**

\* \* \* \* \*

(e) The contracting officer shall insert the clause at 552.238-74, Submission and Distribution of Authorized GSA Schedule Pricelists, in solicitations and contracts awarded under the multiple award schedule program.

**PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

3. Section 552.238-74 is added to read as follows:

**552.238-74 Submission and distribution of authorized GSA schedule pricelists.**

As prescribed in 538.203-71(e), insert the following clause:

**Submission and Distribution of Authorized GSA Schedule Pricelists (XXX 1992)**

(a) *Definition.* For the purposes of this clause, the Mailing List is [Contracting officer shall insert either: "the list of Federal addressees provided to the Contractor by the Contracting Officer" or "the Contractor's listing of its Federal government customers"].

(b) The Contracting Officer will return one copy of the Authorized GSA Schedule Pricelist to the Contractor with the notification of contract award. The Contractor shall not print or distribute the pricelist without written approval from the Contracting Officer.

(c)(1) The Contractor shall provide to the GSA Contracting Officer:

(i) Two paper copies of Authorized GSA Schedule Pricelist, and

(ii) The Authorized GSA Schedule Pricelist on a common-use electronic medium. The Contracting Officer will provide detailed instructions for the electronic submission with the award notification. Some structured data entry in a prescribed format may be required.

(2) The Contractor shall provide to each addressee on the mailing list either:

(i) One paper copy of the Authorized GSA Schedule Price List; or

(ii) A self-addressed, postage-paid envelope or postcard to be returned by addressees that want to receive a paper copy of the pricelist. The Contractor shall distribute price lists within 20 calendar days after receipt of returned requests.

(3) The Contractor shall advise each addressee of the availability of pricelist information through the on-line Multiple Award Schedule electronic data base.

(d) The Contractor shall make the distribution required in paragraph (c) of this section at least 15 calendar days before the beginning of the contract period, or within 30 calendar days after receipt of the Contracting Officer's approval for printing, whichever is later.

(e) During the period of the contract, the contractor shall provide one copy of its Authorized GSA Schedule Pricelist to any authorized schedule user, upon request. Use of the mailing list for any other purpose is not authorized.

(End of Clause)



Dated: November 2, 1992.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 92-27455 Filed 11-13-92; 8:45 am]

BILLING CODE 6820-61-M

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### 49 CFR Part 213

[Docket No. RST-90-1, Notice No. 1]

RIN 2130-AA75

### Track Safety Standards; Miscellaneous Proposed Revisions

**AGENCY:** Federal Railroad Administration (FRA), DOT.

**ACTION:** Advance notice of proposed rulemaking (ANPRM).

**SUMMARY:** This notice proposes to identify those sections of the present Track Safety Standards which FRA is considering for amendment or deletion. Additional regulatory requirements which may be needed to adequately address the present railroad operating environment will also be discussed in this notice. This notice will also introduce alternate standards for compliance with existing regulations, including performance-based standards in two significant areas, which have the potential for realizing notable improvements in the efficient use of labor and material, thereby reducing the cost of compliance. This action is being undertaken by FRA in an effort to improve its safety regulatory program by ensuring that provisions governing track safety are necessary, effective, and suitably flexible.

**DATES:** (1) *Written Comments:* Written comments will be accepted by FRA from February 12, 1993 through March 12, 1993. Comments received after March 12, 1993 will be considered to the extent possible without incurring additional expense or delay.

(2) *Public workshops:* A series of public workshops will be held in several locations throughout the country to provide interested parties the opportunity to comment on specific issues addressed in the ANPRM. FRA requests that only technically-oriented persons with specialized experience in the subject matter represent interested parties at these workshops. FRA will conduct at a later date an additional workshop that will address the issue of protecting maintenance-of-way and other non-operating employees from the hazards of train operations. Any person

desiring to participate in any of the workshops should notify the Docket Clerk by December 18, 1992. This notification should identify the workshop in which the person wishes to participate, the party the person represents, and the particular subject matter(s) the person plans to address. The notification should also provide the Docket Clerk with the participant's mailing address.

**ADDRESSES:** (1) *Written Comments:* Comments should identify the docket number and the notice number and should be submitted in triplicate to: Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW, Washington, DC 20590. Persons desiring to be notified that their written comments have been received by FRA should include a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination during regular business hours in room 8201 of the Nassif Building, 400 Seventh Street, SW, Washington, DC 20590.

(2) *Public Workshops:* One-day workshops to discuss particular issues will be held at these locations on the following dates:

*New York, New York on Tuesday, January 26, 1993*

Topics: Responsibility of track owners; Inspector qualifications; Restoration/Renewal of track; and 30-day period under § 213.9

*Atlanta, Georgia on Thursday, January 28, 1993*

Topics: Continuous welded rail/Lateral track resistance; Gage restraint measurement; and Vehicle track interaction

*Denver, Colorado on Tuesday, February 9, 1993:*

Topics: Defective rails/remedial action; Internal rail inspection frequency; System tolerances and reliability; and Torch cut rail

*Chicago, Illinois on Thursday, February 11, 1993*

Topics: Excepted track; Inspection requirements; Definitions; and Other issues significantly affecting track or related structures

Persons who notify the Docket Clerk of an intention to participate in a workshop will be informed by mail about specific sites and times of the workshops. A notice in the Federal

Register about the sites and times will be published at a later date.

The workshops are designed so that technically experienced persons may express their views about the track safety standards and those related issues in which they have a personal interest. The workshops will focus upon the questions posed in this ANPRM. The exact format of each workshop will reflect FRA's particular concern about certain issues discussed in this ANPRM.

Persons desiring to participate in any of the workshops should notify the Docket Clerk by writing to: Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW, Washington, DC 20590.

#### FOR FURTHER INFORMATION CONTACT:

*Principal Program Person:* Allison H. MacDowell, Office of Safety Enforcement, Federal Railroad Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366-6081.

*Principal Attorney:* Nancy Lummen Lewis, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366-0635.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Federal efforts to improve safety in the railroad industry date to the 1890's. Prior to 1970, these efforts were primarily based upon statutes dealing with specific issues such as safety appliances, signal inspections and locomotive inspections. Concerned about a worsening rail safety record, Congress enacted the Federal Railroad Safety Act of 1970 (FRSA) on October 16, 1970 to ensure that FRA had comprehensive authority over "all areas of railroad safety." In October of 1971, FRA's Track Safety Standards (36 FR 20336) became the first rules to be issued in response to the mandate in the FRSA. Even at the time the standards were issued, FRA noted that they were not intended to be the last word on safe track conditions, but an evolving set of safety requirements. As FRA stated in the preamble to the final rule: " \* \* \* the standards \* \* \* will be continually reviewed and revised by FRA in light of technical innovations, the results of the FRA research and development program, and experience under these standards." 36 FR 20336.

Over the years, FRA has amended the Track Safety Standards on a number of occasions. It began a project to extensively revise the standards in 1978, but later withdrew the effort. The most significant amendment was a smaller



revision issued in November of 1982 (47 FR 39398). In the preamble to that final rule, FRA indicated that a more extensive revision of the Track Safety Standards would require long-term study and analysis " \* \* \* to address the remaining areas in the future in a different proceeding, as part of the evolving process of revision of the Track Safety Standards," 47 FR 39398.

Nearly ten years have passed since the amendments of 1982 became effective. During this time, FRA has acquired much knowledge from continuing research and development initiatives. Additional field reporting requirements combined with improved data collection processes have enabled FRA to enhance its statistical analysis capabilities. Application, interpretation, and enforcement of the 1982 amendments have provided FRA with information crucial to further development of the Track Safety Standards. In addition, FRA has received regulatory proposals from the Brotherhood of Maintenance of Way Employees (BMWE) and from the Association of American Railroads (AAR).

The available data have convinced FRA that a revision of the Track Safety Standards is appropriate. The revision contemplated is comprehensive in nature, including updating existing requirements and eliminating those which are obsolete. This ANPRM also explores new requirements which may be necessary to adequately meet the needs of the present railroad operating environment. Before offering a specific proposal for revision, FRA is seeking the views of all interested parties through the issuance of this ANPRM. To facilitate a better exchange of views on the subject, FRA plans to conduct a series of workshops across the country. Each one-day workshop will be comprised of roundtable discussions among technically-oriented representatives of government and industry about those areas of the track standards in need of significant revision, such as continuous welded rail, internal rail inspection, gage restraint, and inspection requirements. FRA will use the data and opinions collected at the workshops to shape a proposed revision.

## II. Sources of Information on Possible Regulatory Changes

FRA has drawn from four primary sources in developing ideas for inclusion in this notice: (1) BMWE's petition for revision of the Track Safety Standards, (2) AAR's recommendations for revisions, (3) FRA's own research, and (4) FRA's experience with enforcement of present track regulations. The

following is a brief summary of the first three of those sources. Details of submissions by the BMWE and the AAR, as well as copies of FRA's published research and development reports, are contained in the public docket. As for FRA's enforcement experience, this notice is suffused with knowledge gained from that source.

### *A. Brotherhood of Maintenance of Way Employees (BMWE)*

In May of 1990, the BMWE submitted to FRA a petition for the revision of the Track Safety Standards (Docket No. RST-90-1). The petition suggested substantive changes to the Track Safety Standards which the BMWE maintained were long overdue. The BMWE's petition reflects a considerable amount of effort in its preparation and generally advocates more restrictive regulations. The petition also suggests that FRA reinstate many of the regulations deleted in the amendments of 1982. FRA delayed acting on this petition in anticipation of the issuance of an ANPRM that would provide the proper forum for all interested parties to comment.

In addition to the general content as described earlier, the BMWE's petition details several new issues:

#### *Maintaining CWR Track*

The BMWE suggests that FRA create a new § 213.120 to outline procedures for railroads to follow when disturbing continuous welded rail (CWR) for either selective maintenance or for large-scale restoration and renewal projects. These procedures parallel requirements already in effect on many Class I carriers. They set standards for proper rail temperature, sufficiency of ballast and suitable anchoring.

#### *Employee Protection*

This suggestion would create a new Subpart G—Employee Protection, which would incorporate by reference specified sections of 29 CFR part 1910 into the Track Safety Standards. These sections are the Occupational Safety and Health Standards administered by the Department of Labor. Employee safety and health are important issues for consideration; however, this ANPRM, which contemplates amendments to the Track Safety Standards, is not the proper forum for that discussion.

One important element of employee safety, the protection of maintenance-of-way employees from train operations, is within FRA's traditional area of expertise and is not addressed in 29 CFR part 1910. Because the exposure of these employees to train operations results, in

part, from activities required for compliance with 49 CFR part 213, FRA perceives this area of employee safety to be relevant to revisions of part 213, and it will conduct workshops to fully explore the issue.

### *B. Association of American Railroads (AAR)*

In March of 1992, the AAR informally submitted to FRA a list of recommended revisions to the Track Safety Standards. Many of these suggested revisions involve changes in the wording of existing regulations to provide additional flexibility to accommodate future innovations in railroad technology. Several of the suggested revisions represent new approaches in determining compliance with certain sections of the existing regulations.

#### *Rail Restraint Alternate Standard*

AAR suggests creating a new § 213.128, under Subpart D—Track Structure, which would permit the use of a performance-based standard as an alternative for compliance with the requirements of § 213.109 (Crossties) and § 213.127 (Rail fastenings) in Classes 1 through 3 track. This alternate standard would attempt to objectively measure the lateral rail restraint capability of the crossties and rail fasteners under known applied lateral loads.

#### *Inspection of Rail*

AAR suggests modifying § 213.237 (Inspection of rail), under Subpart F—Inspection, to include, in addition to a time interval, each passage of a specified amount of MGT (million gross tons) of traffic as an event which must be considered for required rail inspections. Another modification to this Section would require rail inspections of Class 3 track over which passenger trains do not operate.

### *C. Research and Development Initiatives*

FRA has sponsored continuing research and development initiatives since the amendments of 1982. These initiatives, begun in the late 1970's, have been conducted with the assistance of the industry through the American Railway Engineering Association (AREA) Ad Hoc Committee on Track Performance Standards. They have identified four subjects of relevance: (1) Vehicle/track interaction; (2) internal rail inspection; (3) continuous welded rail; and (4) gage restraint measurement.



### Vehicle/Track Interaction

Since 1975, FRA has been conducting research to examine vehicle interaction with various track geometry parameters. In 1978, FRA began to direct the research<sup>1</sup> towards developing a different approach to analyzing vehicle response to track geometry anomalies. The current Track Safety Standards, in § 213.63 (Track surface), establish minimum compliance thresholds for track surface anomalies which are measured as single events. FRA's recent research, however, has examined vehicle response to track surface anomalies of the same species that occur repeatedly in a relatively short section of track. The results of this research show that for certain types of rail vehicles, repeated events of crosslevel anomalies of a lesser magnitude than the current FRA threshold for a single event produce wheel lift or wheel climb.

Further research indicates that alignment irregularities can aggravate vehicle response to track surface anomalies. Future research will explore the feasibility of developing minimum compliance thresholds for combinations of alignment and track surface anomalies.

### Internal Rail Inspection/Remedial Action

The rail integrity research program sponsored by FRA has studied growth behavior patterns of some commonly occurring rail defects. Using the information developed from this research,<sup>2</sup> FRA proposes to establish new criteria for frequency of internal rail inspection for the detection of rail defects. FRA will also scrutinize the remedial action table for rail defects contained in the current Track Safety Standards.

One of the defect categories of major concern is the "detail fracture", a fatigue crack that develops from shelling cracks near the running surface of the rail. The detail fracture has clearly become the most predominant type of rail defect found today in those tracks carrying high levels of traffic and primarily constructed with CWR. FRA research indicates that gross tonnage can be used as a practical equivalent to fatigue stress cycles for the purpose of studying growth behavior patterns of detail fractures.

Because of changes in the railroad operating environment, such as increased annual tonnages and unit trains consisting of fully loaded cars of 100-ton capacity or greater, required rail inspections must consider factors such as cumulative tonnage, annual tonnage, and rail defect history in addition to time intervals between inspections.

### Continuous Welded Rail (CWR)

CWR track has become the preferred choice of most railroads for track construction for heavy tonnage main lines and heavily-used branch feeder lines. CWR is naturally subjected to high compressive and tensile forces which, if not adequately restrained, can result in track buckling or pull-apart phenomenon. Rail anchors are installed on CWR track to provide longitudinal restraint against traffic-induced movement and the compressive and tensile forces associated with expansion and contraction.

Recent FRA research<sup>3</sup> has concentrated on track buckling which is unpredictable, occurs instantaneously, and often causes catastrophic results. In 1991, the railroad industry reported 38 accidents caused by buckled track. In addition, eight accidents were caused by irregular track alignment. FRA questions whether those accidents or derailments reported by railroads to be caused by irregular track alignment were not actually caused by track buckling. The reportable monetary damages resulting from these two categories totaled \$7,878,745.

The primary objective of the track stability research program has been to develop criteria, guidelines, and recommendations to improve the resistance of CWR track to buckling. This program consists of three major activities: (1) Definition of the critical forces and conditions associated with track buckling; (2) quantification of the parameters which govern the resistance of track to buckling; and (3) development of technology which will detect incipient failures prior to track buckling.

FRA research findings indicate that over a period of time, the neutral or "stress free" temperature of CWR can shift downward as much as 30 degrees Fahrenheit. This phenomenon occurs when normal maintenance activities such as track surfacing, crosstie renewals, and rail replacements all take place during normal daily and seasonal temperature variations. Uncontrolled longitudinal and lateral movements of

the rail/track structure also contribute to the downward shift. Over time, the shift in neutral temperature increases the susceptibility of CWR track to buckle as the maximum rail temperature increases with the ambient air temperature. Another significant factor that tends to increase the possibility of track buckling is the development of lateral line abnormalities which increase in magnitude over time.

Present FRA research is attempting to quantify the lateral resistance necessary for CWR track to resist buckling under the most severe thermal load environment. Specifically, as the differential between the maximum rail temperature and the rail neutral temperature increases, then the track lateral resistance must increase in order to prevent buckling.

### Gage Restraint Measurement

Historically, the ability of track structure to maintain gage has been subjectively determined by visual evaluation of crossties and rail fasteners. The inability of the track structure to perform this vital function sometimes becomes apparent only after a derailment occurs. FRA/Industry research of gage restraint has focused on developing a system to objectively measure the gage restraint capacity of the track structure. This research<sup>4</sup> has led to the formulation of the Gage Restraint Measurement System (GRMS) which utilizes a 100-ton capacity hopper car coupled to an instrumentation/support car and towed by a locomotive over a stretch of track to be evaluated.

The hopper car is outfitted with a specially designed telescoping axle (referred to as the "split axle") capable of applying a known lateral force to the track at the wheel/rail interface. The hopper car is also equipped with two gage measuring systems, one for the measurement of unloaded gage which is located 20 feet ahead of the "split axle", and one for the measurement of loaded gage which is located at the "split axle" itself. Computer control and data storage/presentation are located in the instrumentation/support car which has its own electrical power source.

As the GRMS moves over the track at speeds up to 25 mph, unloaded gage measurements are compared to loaded gage measurements at one-foot intervals. The GRMS offers a non-destructive test as the vertical loads seat the rail in the plates and the applied lateral loads overcome friction

<sup>1</sup> Pertinent research documents from FRA's Office of Research and Development relative to Vehicle/Track Interaction.

<sup>2</sup> Pertinent research documents from FRA's Office of Research and Development relative to Rail Integrity.

<sup>3</sup> Pertinent research documents from FRA's Office of Research and Development relative to Track Lateral Stability.

<sup>4</sup> Pertinent research documents from FRA's Office of Research and Development relative to Gage Restraint Measurement.



and sufficiently engage the rail fastening system and exercise the track without permanent damage.

The GRMS uses the comparison between unloaded and loaded gage to develop two track indices. The projected loaded gage (PLG) extrapolates the data to estimate what the actual loaded gage would be if severe loading conditions were applied. PLG is used as a wide gage safety and maintenance index. The deflection-rate index is the loaded gage deflection divided by the actual applied lateral load. It is a direct measurement of track strength and is used for maintenance planning purposes.

The GRMS has been tested successfully on many railroads throughout the country. The results of this research indicate that an objective evaluation of the rail restraint capability of crossties and rail fastening systems, based on their performance under vehicle-induced loading, is possible. The GRMS, or similar type systems, can therefore be considered as an alternative or supplement to present visual inspections.

### III. Identification of Major Issues

Based on the four sources of information explained above, FRA has identified several areas that may need to be addressed in the revisions. The major issues identified by FRA are: (1) Excepted track; (2) inspection of rail; (3) continuous welded rail; (4) gage restraint measurement; (5) definitions.

#### Excepted Track

Under 49 CFR 213.4, a track owner may designate a segment of track as excepted track provided that certain conditional requirements are satisfied and operational restrictions adhered to. Once excepted, the segment of track is exempt from the requirements of Subparts B, C, D, and E of the Track Safety Standards.

In the preamble to the 1982 Notice of Proposed Rulemaking, FRA outlined its perception of the context in which excepted track would be used: "In this section the FRA is proposing to permit certain yard and low density branch lines to be excepted from the application of the standards," 47 FR 7276. Further in the document: "FRA believes that these segments are generally on comparatively level terrain and pass through areas where it is highly unlikely that a derailment would endanger persons along the railroad right-of-way," 47 FR 7276.

Railroads have applied the excepted track regulation far more extensively than FRA envisioned in 1982. The immunities afforded a railroad by the excepted track provisions were

designed for select trackage existing within a certain environment. FRA's recent experience with excepted track reveals an ever-increasing number of track miles being classified under this provision. Some tracks are located in critically sensitive areas, for instance, secondary lines over which hazardous materials are transported through residential areas. Yard tracks regularly used for hazardous materials movements within close proximity to major population centers have also been classified as excepted track. Most disturbing of all, however, is the seemingly conscious decision of some railroads to designate track as excepted rather than comply with the minimum Track Safety Standards. Some such designations occur only after a railroad is advised by FRA of its non-compliance, when in fact the railroad should have taken remedial action prior to the FRA inspection.

One option the ANPRM discusses is that FRA eliminate the provisions for excepted track altogether. In the alternative, it solicits comment on additional requirements and restrictions for excepted track to make this regulation a less attractive option to full compliance with minimum FRA Track Safety Standards.

#### Defective Rails/Inspection of Rail

Defective rails continue to be a major factor in reportable track-caused accidents. In 1991 alone, 200, or 21 percent of the reportable track-caused accidents, were attributed to defective rails. Damages from these accidents cost the industry \$18,566,000.

In this ANPRM, FRA will discuss proposed changes for the remedial action table. These changes will attempt to ensure that remedial actions are commensurate with the relative size and potential for service failure that the type of rail defect represents. FRA will also discuss revisions to some of the current remedial actions that fail to provide conclusive disposition of certain rail defects.

The rail integrity research program sponsored by FRA has developed information which indicates that cumulative tonnage and annual tonnage are factors that should be considered when determining the frequency of required rail inspections. The ANPRM discusses incorporating these factors into the process of determining minimum requirements for rail inspections.

The ANPRM also explores the need for minimum requirements for internal rail inspection technology. The discussion includes minimum levels of detectability and the possible necessity

for a test to produce permanent graphic or pictorial results.

#### Continuous Welded Rail (CWR)

As discussed at length in the previous section, FRA/Industry research has yielded important information regarding the behavior of CWR under various conditions. FRA proposes to draw on this information to discuss minimum requirements for the installation and maintenance of CWR track.

#### Gage Restraint Measurement

Research shows that the Gage Restraint Measurement System (GRMS) can be used as an alternative to current industry practice of visually determining gage restraint capability. This ANPRM discusses what value for projected loaded gage (PLG) can be used as a safety limit to apply to all classes of track.

#### Definitions

The Track Safety Regulations lack specific definitions for words and phrases that are critical to the application, interpretation, and enforcement of these regulations. This ANPRM discusses the addition of a new Subpart G—Definitions, in which those critical words and phrases will be defined.

### IV. Section-by-Section Analysis

To better focus discussion of the points raised, FRA has prepared a section-by-section analysis of suggested topics for revision. Where an issue may be addressed by changing existing regulations, FRA describes the existing requirement and then identifies specific questions about which it desires comment. Where the issue to be addressed does not relate to an existing regulation, FRA indicates what has been suggested for inclusion and specifies questions it wants answered to address the issue.

FRA is obligated to prepare an economic evaluation of any regulatory changes it proposes should it determine that such changes are warranted. Therefore, FRA needs any relevant data which commenters may have available. Anyone commenting on any of the proposals in this advance notice should include in the comments any available estimates of expected costs and benefits of the proposals. These estimates should be contrasted with the costs and benefits of existing regulations. Likewise, FRA would appreciate those planning to participate in the workshops to be prepared to discuss economic issues generated by their positions. FRA will give greater weight to data that is



well-documented, or which FRA can independently confirm.

*Section 213.1 Scope of Part.* Under current § 213.1, the Track Safety Standards are described as "initial minimum" safety requirements for railroad track that is part of the general railroad system of transportation. After more than 20 years of experience with the Track Safety Standards, FRA proposes to redefine this latest generation of safety requirements. Because the revised standards will replace the first standards issued in 1971, they will no longer be called "initial" requirements.

(1). Should FRA also remove the word "minimum" and term the revised standards simply "safety requirements"?

*Section 213.3 Application.* Under the Federal Railroad Safety Act of 1970, FRA's jurisdiction extends to all railroads except rapid transit operations in urban areas. However, in drafting part 213, FRA chose to apply the track regulations to only standard gage track used in the general railroad system of transportation and not to trackage located inside an installation. On those occasions when a general system railroad makes an incursion onto an installation rail system (e.g., a major railroad picks up or sets off cars inside an industrial plant), the general system railroad remains part of that system while inside the installation and all of its activities are covered by FRA's regulations during that time. Appendix A to part 209, under "The Extent and Exercise of FRA's Safety Jurisdiction," explains: "The plant railroad itself, however, does not get swept into the general system by virtue of the other railroad's activity, except to the extent it is liable, as the track owner, for the condition of its track over which the other railroad operates during its incursion into the plant. FRA intends to amend this section to be consistent with the policy statement contained in part 209.

(2). Should railroads off the general system designate the tracks over which a general system railroad may operate?

(3). Should FRA apply part 213 to railroads conducting operations outside the general system, such as certain tourist and excursion railroads and private freight railroads operating outside of plant gates? Should FRA also issue specialized requirements which apply to 24-inch and 36-inch narrow gage railroads? From what body of reference should these requirements be based?

*Section 213.4 Excepted Track.* Under current § 213.4, a track owner may designate a segment of track as excepted track provided that certain

conditional requirements are satisfied and operational restrictions adhered to. Once excepted, the segment of track is exempt from the requirements of subparts B, C, D, and E of the Track Safety Standards.

(3). Should FRA consider eliminating the provision for excepted track? In the alternative, should FRA place additional conditions and certain restrictions on the application of excepted track?

(4). Should there be an absolute prohibition on the movement of cars required to be placarded by the Hazardous Materials Regulations (49 CFR Part 172) over track that is excepted? Should there be a limit on the amount of time which a segment of track can remain in excepted status? Should an individual consist tonnage limit or annual tonnage limit be prescribed for excepted track? Should FRA determine, in a manner similar to investigating a waiver of compliance, whether or not an application for excepted track status is consistent with railroad safety? If so, what approval criteria should apply? Should the excepted track concept be eliminated from part 213?

*Section 213.5 Responsibility of Track Owners.* The track regulations issued in 1971 held track owners responsible for track defects only if they know or have notice of the defects. This standard of liability requiring scienter by the railroad implicitly carries with it additional responsibilities, such as inspection and recordkeeping requirements, so that a railroad can obtain and document the requisite knowledge. FRA's enforcement experience with that standard has indicated some degree of confusion as to how a track owner may acquire sufficient notice to establish liability. FRA believes some regulatory language clarifying the current standard may be desirable.

In addition, § 213.5 holds the owner of track responsible for compliance with this part unless a petition for assignment of responsibility is approved by the FRA Administrator. Frequently, track owners lease the track to railroad operators, thereby losing power to exercise direct control over track maintenance. FRA suggests shifting the responsibility for compliance with part 213 to those entities in the best possible position to ensure that compliance, even if the entities are not the track owners.

(5) Should FRA clarify the language that applies this part to anyone "who knows or has notice that the track does not comply with the requirements of this part?" Is there a way to more clearly state this constructive knowledge standard?

(6) Should FRA concentrate its focus on track usage and/or authority for movement to assign responsibility? Should FRA focus on the party who maintains the track?

*Section 213.7 Designation of Qualified Persons to Supervise Certain Renewals and Inspect Track.* Section 213.7 presently requires that each track owner designate qualified maintenance supervisors and track inspectors. This section also prescribes minimum qualifications for these positions.

(7) Should FRA specify a minimum time requirement for the experience component of the combination of training and experience qualifications? Should FRA establish a more formal mechanism for requalification when an inspector is assigned to a new territory or when part 213 is amended?

(8) Under § 213.7(a)(1) (i) and (ii), is the term "supervisory" a necessary component of experience?

(9) Should FRA play a more active role in determining the qualifications of designated persons? <sup>5</sup>

*Section 213.9 Class of Track: Operating Speed Limits.* Under the current § 213.9, maximum permissible operating speeds for both passenger and freight trains are established for each class of track. Also, operations over trackage not meeting all of the requirements for Class 1 track may continue for a maximum of 30 days under the authority of a qualified person.

(10) Should FRA develop track standards for speeds in excess of 110 mph? What areas should these standards address?

(11) Is the 30-day period under § 213.9(b) excessive? If so, what is a more reasonable figure? Should the conditions under which operations may continue be more specifically described?

*Section 213.11 Restoration or Renewal of Track Under Traffic Conditions.* Section 213.11 currently provides that if track that does not comply with these standards continues to handle traffic while it is being restored or renewed, it must be under the continuous supervision of a qualified person. Presently, this section does not require the imposition of a speed restriction for continued operation.

(12) Should FRA require the imposition of a speed restriction when work of this nature is being performed on Class 2 and higher track? How should this requirement be worded?

<sup>5</sup> NTSB/RAR-87/05—Amend the Track Safety Standards, 49 CFR 213.7, to require periodic requalification of persons for supervising certain renewals and inspection of track. (R-87-33).



**Section 213.53 Gage.** Section 213.53 prescribes minimum and maximum gage thresholds for compliance in each class of track.

(13) Are the compliance threshold dimensions contained in this section adequate? If not, what should they be?

**Section 213.55 Alinement.** Under § 213.55, compliance thresholds for track alinement are prescribed for each class of track.

(14) Should FRA consider prescribing compliance thresholds for "changes in alinement" which are measured as multiple events, in addition to "deviations from uniformity" which are measured as single events?

(15) Should FRA address the alinement in transition spirals with more restrictive compliance thresholds than for curved track?

**Section 213.57 Curves; Elevations and Speed limitations.** Currently, § 213.57 specifies the maximum allowable operating speed for each curve based on a three-inch unbalanced superelevation. This section also restricts the amount of superelevation in a curve to six inches, plus the allowable deviation permitted in § 213.63. In a worst case scenario, this could result in nine inches of superelevation on Class 1 track.

(16) Should these limits be changed to permit no more than seven inches of superelevation under any circumstances?

(17) Should FRA consider revisions to this section which would allow passenger train speeds based on four-inch unbalanced superelevation? For modern freight trains, should FRA consider reducing, or making more restrictive the present three-inch unbalance limitation?

**Section 213.59 Elevation of Curved Track; Runoff.** Safety considerations dealing with this subject matter are provided in other sections of the Track Safety Standards.

(18) Should FRA delete this section in its entirety?

**Section 213.63 Track Surface.** Under § 213.63, compliance thresholds for individual track surface parameters are prescribed for each class of track.

(19) Should this table be modified to include compliance thresholds for repeated events such as crosslevel?

(20) Can the present table be simplified in any way? If so, in what manner? Is the prescribed rate of elevation runoff appropriate for each class of track?

**Section 213.109 Crossties.** Under § 213.109, minimum requirements are specified for the condition, location, and number of non-defective crossties. The conditions rendering a crosstie defective, or non-defective, are

subjectively determined by visual inspection of the crosstie in track. The present standards define certain criteria which can be observed, or measured, which determine whether a crosstie is effective for the purposes of the Track Safety Standards.

FRA's research experience indicates that an alternative performance-based standard might possibly be introduced which would objectively determine crosstie and rail fastener effectiveness. The performance standard would evaluate the gage restraint capability of crossties and rail fasteners under vehicle-induced loading of the track structure. The applied loads would sufficiently engage and exercise the rail fasteners, but would not permanently damage the track structure.

(21) What should be the values of the applied vertical and lateral loads? If the resulting data are then extrapolated to estimate gage widening under severe loading conditions, what values for vertical and lateral loads would represent expected severe loading conditions?

(22) What threshold should be established for the projected loaded gage safety limit? What would constitute proper remedial action for a defect found by this type of inspection? How would the remedial action be evaluated? By visual inspection or by another performance-based test?

(23) What criteria should FRA establish for the frequency of such a performance-based test? Should the frequency be determined by a combination of tonnage and elapsed time? What other factors should be considered?

(24) What recordkeeping requirements should FRA establish for the railroad to document such a test?

(25) How would a railroad choose to use this alternative standard? Should the railroad be required to choose either this alternative or current methods? If so, what time and distance limits should apply? What benefits could be realized from this alternative standard?

(26) Do the present crosstie standards adequately address the failure modes associated with concrete crossties?

**Section 213.113 Defective Rails.** Under § 213.113, the Track Safety Standards prescribe the remedial action that must be taken when a track owner learns that a rail in track contains a defect. FRA's experience with the remedial action table over the past ten years indicates that changes in the existing requirements need to be considered.

(27) As the size (as a percentage of rail head cross-sectional area) or length of rail defects increases, does the

specified remedial action reflect the increased potential for service failure?

(28) Should FRA impose additional requirements to remedial actions B, F, and G to further account for rail defects that are not removed from track? Should tonnage, heavy wheel loads, or weight of rail be considered in making such determinations?

**Section 213.119 Continuous Welded Rail (CWR).** Intervening experience and research suggest that it may be appropriate to re-institute this section which was deleted in the 1982 amendments to the Track Safety Standard.<sup>6</sup> In revised form, this section would address regulations pertaining to the installation and maintenance of CWR.

(29) Should railroads be required to keep records indicating the temperature of CWR when it was installed and/or adjusted? Should records be kept relative to rail replacements in CWR track?

(30) Should curves in track constructed with CWR be referenced with permanent offsets and then monitored periodically to observe any tendency to change position due to compressive or tensile forces? Should FRA require these offsets to be checked before and after the curve is disturbed "out of face" in cold weather to detect whether "stringlining" has occurred?

(31) What should the rail anchoring requirements be for CWR track?

(32) Should FRA prohibit disturbing CWR track above a specified temperature?

(33) Should FRA address the lateral resistance of the track in these regulations? How would the lateral resistance be defined? How would it be measured?

**Section 213.121 Rail Joints.** Section 213.121 prescribes various requirements with respect to rail joints.

(34) By what means should the proper design and dimensioning of a joint bar be indicated?

(35) Should the prohibition on torch-cut bolt holes be extended to Class 2 track?

(36) Should FRA develop a regulation on the torch cutting of rail ends?<sup>7</sup>

<sup>6</sup> NTSB/RAR-91/05—Conduct a review of Track Safety Standards to include as a minimum evaluation of procedures associated with maintaining and installing continuous welded rail and its attendant structure. (R-91-65).

<sup>7</sup> NTSB/RAR-85/01—Require a maximum allowable operating speed not exceeding 10 mph be imposed on any railroad track having a torch-cut rail end in a bolted track joint. (R-85-4).



*Section 213.123 Tie Plates.* Although the use of tie plates is considered to be a good maintenance practice, safety considerations dealing with this subject matter are provided in other sections of the Track Safety Standards.

(37) Should FRA delete this section in its entirety?

*Section 213.127 Rail Fastenings.* Currently, § 213.127 requires a sufficient number of rail fastenings to maintain gage.

(38) FRA's research experience indicates that an alternative performance-based standard can be introduced to measure the gage restraint capability of the rail fastening system (see § 213.109 Crossties). Are these issues particular to specific types of fasteners that should be taken into consideration in developing such a standard?

*Section 213.135 Switches.* Section 213.135 specifies requirements for switch points, stock rails, and associated appurtenances affecting the movement of switch points.

(39) What should be the minimum number of bolts required in a switch heel joint?

(40) Should FRA establish condemning limits for "unusually chipped or worn" switch points which are quantitatively defined? What should these limits be?

*Section 213.233 Track Inspections.* Under § 213.233, requirements for the frequency and manner of inspecting track to detect deviations are prescribed.

(41) Should FRA require the visual inspection of safety critical, non-redundant features of hand-operated switches during required track inspections?

(42) Is there a need for FRA to establish a maximum speed limit for on-track inspection vehicles when conducting inspections for compliance with this part? Should FRA address the issue of how track inspections should be conducted within multiple track territory? \*

*Section 213.235 Switch and Track Crossing Inspections.* Under § 213.235, requirements for the frequency and manner of inspecting switches and track crossings are prescribed.

(43) Should FRA require the switch mechanism to be operated during monthly inspections? Should requirements be added which specify

the inspection of safety critical assemblies?

*Section 213.237 Inspection of Rail.* Under § 213.237, requirements for the frequency and manner of inspecting rail for internal defects are prescribed. FRA has noted a lack of consistent quality control in internal rail flaw detection programs, and broken rails continue to be a major cause of train accidents.

(44) Based on research and service experience, FRA proposes to incorporate factors such as cumulative tonnage and annual tonnage when determining the frequency of required rail inspections. If accurate tonnage records are not kept, what other means can be used to estimate these figures?

(45) Considering the many types of rail inspection vehicles in use today, is there a need to establish minimum levels of system sensitivity and reliability? Is there also a need to require the test to produce permanent graphic or pictorial results, which can be reviewed after the immediate test? Are existing technical standards available that could be adapted to this purpose?

(46) Should FRA require internal rail flaw inspections on all Class 3 track, regardless of whether or not passenger trains operate there?

*Section 213.241 Inspection Records.* Section 213.241 requires each railroad to prepare and maintain records of certain required inspections.

(47) Should FRA require a separate report for the inspection of switches and track crossings?

(48) The requirement to maintain records at division headquarters has become outdated by mergers and territory consolidations which have increased the size of divisions dramatically. Could computer-generated inspection reports be an option? What means can be used to ensure the integrity of inspection records maintained on a computer system absent the signature of the inspector?

*Definitions.* It appears useful to define those critical words and phrases upon which the application, interpretation, and enforcement of these regulations are predicated.

(49) What are the critical words and phrases requiring definition? What terms have proved to be vague or problematic in their application?

*Employee Safety.* The protection of maintenance-of-way employees and other non-operating employees from train operations is a subject within FRA's special expertise. Deaths and injuries continue to occur among the employees, despite carrier rules and FRA's informal efforts to provide safe practices.

(50) What specific job-related activities could result in the exposure of train crews and maintenance-of-way employees to the hazard of harm from train operations? What reasonable measures might FRA take to address these hazards?

*Metrification.* FRA is considering a transition period within which adoption of the Metric System of measurement will be introduced. During this period, all values in the English System of units will be followed by parenthesized metric equivalents. Tables will be shown in dual versions, both English and Metric.

(51) Will this dual system of measurement create any confusion among those who are required to be knowledgeable of the regulations?

*Other Issues.* Issues not listed may be addressed provided they pertain to or significantly affect the track or related structures. Statements addressing other pertinent issues should be specific and contain detailed supporting information.

## V. Regulatory Impact

### Executive Order 12291

This rule has been evaluated in accordance with existing policies and procedures, and it is considered to be non-major under Executive Order 12291 but significant under DOT policies and procedures because it has a substantial impact on a major transportation safety problem (44 FR 11034, February 26, 1979).

### Regulatory Flexibility Act

This rule's economic impact cannot be accurately quantified with the information now known to FRA. An analysis of economic impact, including the impact on small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), will be made after evaluating the data submitted in response to this advance notice of proposed rulemaking, and the findings of that analysis will be published as part of any notice of proposed rulemaking in this matter.

### Paperwork Reduction Act

A rule issued in this proceeding may impose information collection requirements, the extent and impact of which can only be evaluated with the data FRA expects to develop as a result of this advance notice of proposed rulemaking. If requirements meeting Federal thresholds are imposed, they will be submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980. No recordkeeping requirements

\* NTSB/RAR-87/05—Amend 49 CFR 213.233 (b) and (c) to establish procedures for inspection of track in multiple track areas and to define the maximum speed for riding over the track in a track inspection vehicle. (R-87-34).



will be mandatory until such approval has been obtained.

*Executive Order 12612 (Federalism Assessment)*

This rule's effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government will be determined once FRA evaluates the information submitted in response to this advance notice of proposed rulemaking. Thus, preparation of a Federalism Assessment in accordance with Executive Order 12612 is not warranted at this time.

Issued in Washington, DC, on November 6, 1992.

Gilbert Carmichael,

*Administrator, Federal Railroad Administration.*

[FR Doc. 92-27694 Filed 11-13-92; 8:45 am]

BILLING CODE 4910-06-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 675

#### Groundfish of the Bering Sea and Aleutian Islands

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of availability of an amendment to a fishery management plan and request for comments.

**SUMMARY:** NMFS issues this notice that the North Pacific Fishery Management Council (Council) has submitted Amendment 21 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI) for Secretarial

review and is requesting comments from the public. Copies of the amendment may be obtained from the Council (see **ADDRESSES**).

**DATES:** Comments on the FMP amendment should be submitted on or before January 11, 1993.

**ADDRESSES:** Comments on the FMP amendment should be submitted to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, Alaska, 99802 (Attn: Lori Gravel) or delivered to the Federal Building Annex, suite 6, 9109 Mendenhall Mall Road, Juneau, Alaska.

Copies of the amendment and the environmental assessment/regulatory impact review/initial regulatory flexibility analysis prepared for the amendment are available from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510 (telephone 907-271-2809).

**FOR FURTHER INFORMATION CONTACT:** Susan Salvesson, National Marine Fisheries Service, Alaska Region, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that each Regional Fishery Management Council submit any fishery management plan or plan amendment it prepares to the Secretary of Commerce (Secretary) for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary, upon reviewing the plan or amendment, must immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider the public comments received during the comment period in determining whether to approve the plan or amendment.

Amendment 21 would (1) establish a procedure for setting and adjusting

Pacific halibut bycatch mortality limits for trawl and non-trawl gear fisheries through a regulatory amendment process rather than an FMP amendment; (2) establish Pacific halibut bycatch limits in terms of halibut mortality rather than halibut bycatch; and (3) establish FMP authority to apportion annually the non-trawl halibut bycatch mortality limit among fisheries and seasons as bycatch allowances. This authority would be similar to existing FMP provisions for annual apportionments of prohibited species catch limits among trawl gear fisheries.

Halibut bycatch limits for trawl and non-trawl gear fisheries that were established for 1992 under Amendment 19 to the FMP (57 FR 43926, September 23, 1992) expire at the end of 1992. Unless regulations authorized under proposed Amendment 21 are implemented, no halibut bycatch restrictions will be in effect for BSAI non-trawl gear fisheries in 1993 and beyond, and the halibut bycatch limit for trawl gear fisheries will revert back to the 1991 level of 5,333 metric tons.

A proposed rule to establish halibut bycatch mortality limits for trawl and non-trawl gear fisheries during 1993 and beyond has been submitted for Secretarial review and approval, under the authority provided under proposed Amendment 21.

#### List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

**Authority:** 16 U.S.C. 1801 *et seq.*

**Dated:** November 10, 1992.

David S. Crestin,

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 92-27701 Filed 11-10-92; 8:45 am]

BILLING CODE 3510-22-M



# Notices

Federal Register

Vol. 57, No. 221

Monday, November 16, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF COMMERCE

### International Trade Administration

(A-489-501)

#### Certain Standard Welded Carbon Steel Pipe and Tube Products From Turkey; Amended Final Results of Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of amendment to final results of antidumping duty administrative review.

**SUMMARY:** On December 17, 1990, Borusan Holding A.S. and Borusan Ihracat Ithalat ve Degitim A.S. ("Borusan") filed a lawsuit in the Court of International Trade ("CIT"), challenging the final results of administrative review on certain standard welded carbon pipe and tube products from Turkey for the review period of May 1, 1987 through April 30, 1988 (55 FR 42230, October 18, 1990). On May 3, 1991, the CIT directed the International Trade Administration ("ITA"), in its first partial remand, to calculate a dumping margin, if any, for Borusan, by including U.S. sales of Borusan's U.S. based subsidiary Tubeco Pipe and Steel Corp ("Tubeco"), and by adjusting Borusan's U.S. price to include a duty drawback adjustment.

On April 23, 1992, the CIT directed the ITA, through its second partial remand, not to make a downward adjustment for reimbursement to Tubeco by Borusan of countervailing duties paid by Tubeco. On June 12, 1992, the Department submitted its final results determination to the CIT. On July 15, 1992, the CIT affirmed the Department's Final Results of Second Partial Remand and dismissed the lawsuit.

**EFFECTIVE DATE:** November 16, 1992.

**FOR FURTHER INFORMATION CONTACT:** Dennis U. Askey or Melissa Skinner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482-4851.

#### SUPPLEMENTARY INFORMATION:

##### Background

On October 18, 1990, the ITA published the final results of its administrative review of the antidumping duty order on certain welded carbon steel pipe and tube products from Turkey, covering the period May 1, 1987 through April 30, 1988 (55 FR 42230). A lawsuit was filed by Borusan on December 17, 1990, challenging various aspects of the final results.

On May 3, 1991, the CIT, in the first partial remand, ordered the Department to include in the calculation of its dumping margin, if any, United States sales made by Borusan through Tubeco. The CIT also ordered ITA to add the proper duty drawback adjustments claimed by Borusan to Borusan's United States sales price. On July 5, 1991, ITA issued its Final Results of Partial Remand pursuant to the CIT's order of May 3, 1991. Borusan challenged the final results of administrative review, alleging that ITA inappropriately reduced the United States price by the amount of a countervailing duty reimbursement to Tubeco from Borusan.

On April 23, 1992, the CIT, in the second partial remand, ordered the Department to recalculate the dumping margin, if any, using United States sales made by Borusan through Tubeco, without an adjustment made to United States price for reimbursement to Tubeco from Borusan for countervailing duties paid by Tubeco. On June 3, 1992, the Department issued the Draft Results of the Second Partial Remand: *Borusan Holding A.S., et al., v. United States*, Court No. 90-11-00602. No comments were received.

On June 12, 1992, the Department issued the Final Results of Second Partial Remand: *Borusan Holding A.S., et al. v. United States*, Court No. 90-11-00602. ITA determined that Borusan's dumping margin was reduced from that obtained in the Final Results of Antidumping Administrative Review and in the Final Results of First Partial

Remand to the Antidumping Duty Order on Certain Standard Welded Carbon Steel Pipe and Tube products from Turkey (55 FR 42230, October 18, 1990).

These remand results were affirmed by the CIT, in their entirety, as a result of an order issued on July 15, 1992 (*Borusan Holding A.S., et al. v. United States*, Court No. 90-11-00602, Slip Op. 1992-111 (CIT July 15, 1992)). Further, the CIT ordered that the case be dismissed. The parties had sixty (60) days to file an appeal of the CIT's judgement. No appeal was filed.

#### Amended Final Results of Review

As a result of not making the adjustment to United States price for reimbursement to Tubeco from Borusan for countervailing duties paid by Tubeco, we have amended our final results of review. The amended weighted average margin is 2.56 percent of the review period May 1, 1987 through April 30, 1988. The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and Foreign Market Value may vary from the percentage stated above. ITA will issue appraisal instructions directly to the Customs Service.

The final results of the administrative review for the period 1988 through 1989 remain unchanged. The cash deposit rate for Borusan is 0.11 percent. See Pipe and Tube from Turkey; Final Results of Antidumping Duty Administrative Review (56 FR 23864, May 24, 1991).

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This notice is in accordance with section 516A(e) of the Tariff Act of 1930, as amended (19 U.S.C. 1516(a)(e)).



Dated: November 9, 1992.

Rolf Th. Lundberg, Jr.,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-27715 Filed 11-13-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-122-815]

### Final Results of Changed Circumstances Administrative Reviews: Pure Magnesium and Alloy Magnesium From Canada

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** November 16, 1992.

#### FOR FURTHER INFORMATION CONTACT:

Roy A. Malmrose or Rick Herring, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-5414 or 482-3530, respectively.

#### Final Results

Based on the analysis explained in our preliminary results (57 FR 47619, October 19, 1992), we have determined that the amended contract between Hydro-Quebec, the provincially-owned utility company, and Norsk Hydro Canada Inc. (NHCI) does not provide a subsidy. Accordingly, we are directing the U.S. Customs Service to change the cash deposit rates established in our final determinations (57 FR 30946, July 13, 1992), effective on the date of publication of this notice in the *Federal Register*.

#### Comment

We have received the following written comment from one of the interested parties in these reviews: NHCI requests that the Department of Commerce (DOC) adjust the duty deposit rates retroactive to January 1, 1992, the effective date of the revised contract. NHCI argues that doing so would be consistent with the Department's approach in analogous changed circumstances reviews.

#### DOC Position

NHCI has provided no support for its claim that a retroactive adjustment would be consistent with past practice. Furthermore, neither the statute nor the regulations provide justification for NHCI's claim. Pursuant to section 751(b) of the Act, these reviews were initiated—on an expedited basis—to address whether the revised power contract provides a countervailable

benefit. There is no legal requirement that the resolution of this issue have a retroactive effect on the cash deposit rates set by the final determinations. Moreover, these determinations are now subject to binational panel review. Therefore, it would be inappropriate to adjust the cash deposit rates retroactively as NHCI requests.

#### Duty Deposit Rate

In accordance with these final results, we are reducing the duty deposit rates by the amount of the estimated subsidy attributable to the original electricity contract as calculated in the Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada (57 FR 30946, July 13, 1992). Accordingly, the new deposit rates are 7.61 percent *ad valorem*. We will direct the U.S. Customs Service to require a cash deposit of 7.61 percent *ad valorem* for all entries of pure magnesium and alloy magnesium produced and exported by Norsk Hydro Canada Inc., effective on the date of publication of this notice in the *Federal Register*.

Any interested party may request administrative reviews of the countervailing duty orders on pure magnesium and alloy magnesium pursuant to 19 CFR 355.22(a). Written requests for an administrative review must be made in August 1993.

This notice is published in accordance with 19 CFR 355.22(h)(1)(ix).

Dated: November 6, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-27716 Filed 11-13-92; 8:45 am]

BILLING CODE 3510-DS-M

### Minority Business Development Agency

#### Business Development Center Applications: West Palm Beach, FL

**AGENCY:** Minority Business Development Agency, Commerce.

**ACTION:** Notice.

**SUMMARY:** In accordance with Executive Order 11625, the U.S. Department of Commerce's Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance, and the availability of funds. The cost of performance for the first budget period

(12 months) is \$169,125 in Federal funds and a minimum of \$29,846 in non-Federal (cost-sharing) contributions. This Federal amount includes \$4,125 for an annual audit. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The period of performance will be from April 1, 1993 to March 31, 1994. The MBDC will operate in the *West Palm Beach, Florida* geographic service area.

The award number for this MBDC will be 04-10-93006-01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, State and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority businesses.

Applications will be evaluated initially by regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the MBDC program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist them in this effort, MBDCs may



charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of \$50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of \$500,000 or less, and 35% of the total cost for firms with gross sales of over \$500,000. False information on the application can be grounds for denying or terminating funding.

MBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget periods. MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and Agency priorities.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

In accordance with OMB Circular A-129 "Managing Federal Credit Programs," applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements, satisfactory to the Department of Commerce, are made to pay the debt.

Applicants are subject to Governmental Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26.

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

Notification must be provided that all non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if

any key individuals associated with the applicant have been convicted of or are presently facing, criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Public Law 100-690, Title V, Subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a pre-condition for receiving Federal grant or cooperative agreement awards.

15 CFR, Part 28, is applicable and prohibits recipients of Federal contracts, grants, and cooperative agreements from using appropriated funds for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a specific contract, grant or cooperative agreement. Form CD-511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying" and, when applicable, the SF-LLL, "Disclosure of Lobbying Activities," are required.

**CLOSING DATE:** The closing date for submitting an application is *December 16, 1992*. Applications must be postmarked on or before *December 16, 1992*. Proposals will be reviewed by the Atlanta Regional Office. The mailing address for submission of RFA responses is: U.S. Department of Commerce, Atlanta Regional Office, Minority Business Development Agency, 401 West Peachtree Street, NW., suite 1715, Atlanta, Georgia 30308-3516.

A pre-application conference to assist all interested applicants will be held on *December 1, 1992, 9:00 a.m.* at the following address: U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street, NW., room 1715, Atlanta, Georgia 30308-3516.

**SUPPLEMENTARY INFORMATION:** Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. To order a Request for Application (RFA) and to receive additional information, contact: *Carlton L. Eccles, Regional Director* of the Atlanta Regional Office on (404) 730-3300 or U.S. Department of Commerce, Minority Business Development Agency,

401 West Peachtree Street, NW., room 1715, Atlanta, Georgia 30308-3516.

11.800 Minority Business Development  
(Catalog of Federal Domestic Assistance)

Dated: November 6, 1992.

**Carlton L. Eccles,**

*Regional Director, Atlanta Regional Office.*

[FR Doc. 92-27642 Filed 11-13-92; 8:45 am]

**BILLING CODE 3510-21-M**

### **Business Development Center Applications: Tampa, FL**

**AGENCY:** Minority Business  
Development Agency, Commerce.

**ACTION:** Notice.

**SUMMARY:** In accordance with Executive Order 11625, the U.S. Department of Commerce's Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance, and the availability of funds. The cost of performance for the first budget period (12 months) is \$188,867 in Federal funds and a minimum of \$33,329 in non-Federal (cost sharing) contributions. This federal amount includes \$4,607 for an annual audit. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The period of performance will be from April 1, 1993 to March 31, 1994. The MBDC will operate in the Tampa, Florida geographic service area.

The award number for this MBDC will be 04-10-93005-01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, State and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority businesses.

Applications will be evaluated initially by regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business



community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the MBDC program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist them in this effort, MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of \$50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of \$500,000 or less, and 35% of the total cost for firms with gross sales of over \$500,000. False information on the application can be grounds for denying or terminating funding.

MBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget periods. MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and Agency priorities.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

In accordance with OMB Circular A-129 "Managing Federal Credit Programs," applicants who have an outstanding account receivable with the Federal Government may not be

considered for funding until these debts have been paid or arrangements, satisfactory to the Department of Commerce, are made to pay the debt.

Applicants are subject to Government Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26.

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

Notification must be provided that all non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing, criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a pre-condition for receiving Federal grant or cooperative agreement awards.

15 CFR, part 28, is applicable and prohibits recipients of Federal contracts, grants, and cooperative agreements from using appropriated funds for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a specific contract, grant or cooperative agreement. Form CD-511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying" and, when applicable, the SF-LLL, "Disclosure of Lobbying Activities," are required.

**CLOSING DATE:** The closing date for submitting an application is December 16, 1992. Applications must be

postmarked on or before December 16, 1992. Proposals will be reviewed by the Atlanta Regional Office. The mailing address for submission of RFA responses is: U.S. Department of Commerce, Atlanta Regional Office, Minority Business Development Agency, 401 West Peachtree Street, NW., suite 1715, Atlanta, Georgia 30308-3516.

A pre-application conference to assist all interested applicants will be held on December 1, 1992, 9:00 a.m. at the following address: U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street, NW., room 1715, Atlanta, Georgia 30308-3516.

#### **SUPPLEMENTARY INFORMATION:**

Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. To order a Request for Application (RFA) and to receive additional information, contact: Carlton L. Eccles, Regional Director of the Atlanta Regional Office on (404) 730-3300 or U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street, NW., room 1715, Atlanta, Georgia 30308-3516.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: November 6, 1992.

Carlton L. Eccles,

*Regional Director, Atlanta Regional Office.*

[FR Doc. 92-27643 Filed 11-13-92; 8:45 am]

BILLING CODE: 3510-21-M

#### **National Oceanic and Atmospheric Administration**

##### **Coastal Zone Management: Federal Consistency Appeal by the Yeamans Hall Club From an Objection by the State of South Carolina**

**AGENCY:** National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Notice of decision.

On August 1, 1992, the Secretary of Commerce (Secretary) issued a decision in the consistency appeal of the Yeamans Hall Club (Appellant). The Appellant had applied to the U.S. Army Corps of Engineers (Corps) for a permit to fill 0.23 acres of freshwater wetlands to create a dam across a small stream for the purpose of creating a six-acre pond on the Appellant's property in Hanahan, South Carolina. The construction of the dam would have resulted in the flooding of an additional 2.5 acres of freshwater wetlands. In conjunction with the Federal permit



application, the Appellant submitted to the Corps for review by the South Carolina Coastal Council (State), the State of South Carolina's coastal management agency, under § 307(c)(3)(A) of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 1456(c)(3)(A), a certification that the proposed activity is consistent with the State's federally-approved Coastal Management Program.

On August 20, 1990, the State objected to the Appellant's consistency certification for the proposed project on the ground that it is not in accordance with the State's Coastal Management Program (CMP) policies of discouraging the filling or significant permanent alteration of freshwater wetlands. Under CZMA section 307(c)(3)(A) and 15 CFR 930.131, the State's consistency objection precludes the Corps from issuing a permit for the activity unless the Secretary finds that the activity is, either consistent with the objectives or purposes of the CZMA (Ground I) or necessary in the interest of national security (Ground II). The Appellant based his appeal on Ground I.

Upon consideration of the information submitted by the Appellant, the State, interested Federal agencies and private persons, the Secretary made the following findings pursuant to 15 CFR 930.121(d): the alternative proposed by the State of constructing a lake out of uplands was a reasonable, available alternative that is consistent with the State's CMP. Because the Appellant's proposed project failed to satisfy all of the requirements of Ground I, the Secretary did not override the State's objection to the Appellant's consistency certification, and consequently, the proposed project may not be permitted by Federal agencies. Copies of the decision may be obtained from the contact person listed below.

**FOR ADDITIONAL INFORMATION CONTACT:**

Glenn E. Tallia, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., suite 603, Washington, DC 20235, (202) 606-4392.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: November 9, 1992.

Thomas A. Campbell,  
General Counsel.

[FR Doc. 92-27707 Filed 11-13-92; 8:45 am]

BILLING CODE 3510-08-M

**Marine Mammals**

**AGENCY:** National Marine Fisheries Service (NMFS).

**ACTION:** Request for Modification to Scientific Research Permit No. 787 (P444A).

Notice is hereby given that Messrs. Phillip J. Clapham and David K. Mattila, Center for Coastal Studies, Provincetown, MA, 02657, have requested a modification to Permit No. 787 (P444A) pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216) and § 222.25 of the Regulations Governing Endangered Species (50 CFR parts 217-222).

Permit No. 787 was issued on June 23, 1992 (57 FR 49). It authorizes, among other things, the photo-identification and biopsy sampling of humpback whales (*Megaptera novaeangliae*) in waters off western Puerto Rico and the northern U.S. East Coast, over a three-year period.

This modification is requested to expand the study area to include U.S. waters as far south as Miami, FL.

Concurrent with the publication of this notice in the *Federal Register*, the Secretary of Commerce is forwarding copies of this modification request to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this modification request, should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices (by appointment):

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20910 (301/713-2289); Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Dr., Gloucester, MA 01930 (508/281-9200); and;

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Blvd., St. Petersburg, FL 33702 (813/893-3141).

Dated: November 6, 1992.

Nancy Foster,

Acting Deputy Assistant Administrator for Fisheries.

[FR Doc. 92-27600 Filed 11-13-92; 8:45 am]

BILLING CODE 3510-22-M

**Marine Mammals**

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Receipt of applications (P319C), (P522), and (P278D).

Notice is hereby given that the following Applicants have applied in due form for Permits to take marine mammals as authorized by the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361-1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1543), and the regulations governing endangered fish and wildlife (50 CFR parts 217-222).

**Dr. Randall S. Wells, Dolphin Biology Research Institute, 708 Tropical Circle, Sarasota, FL 34242 (P319C):**

A scientific research Permit is requested to incidentally harass up to 3000 Atlantic bottlenose dolphins (*Tursiops truncatus*) over a five-year period along the central west coast of Florida from Crystal River to Fort Myers and Choctawhatchee Bay near Fort Walton Beach, Florida, by close approach for photo-identification censuses, behavioral observations, and underwater acoustic recordings, to continue a NMFS-sponsored low-level monitoring project.

**University of Alaska Museum, 907 Yukon Drive, Fairbanks, AK 99775-1200 (Dr. Joseph Cook, Curator of Mammal Collection) (P522)**

The Museum requests a Permit to import/export, collect worldwide, catalogue and store dead marine mammal specimens from the Orders Cetacea and Pinnipedia for loan to qualified scientific investigators. Specimens include, but are not limited to, skins, skeletons and tissues. Specimens will have: (1) Been collected in the course of other investigations by permitted researchers, (2) been found dead of natural causes, or (3) died incidental to commercial fisheries or



other legal operations of the host country.

**Brent Stewart, Ph.D., Hubbs-Sea World Research Institute, 1700 South Shores Road, San Diego, CA 92109 (P278D)**

A scientific research Permit is requested to incidentally harass up to 5800 northern elephant seals (*Mirounga angustirostris*), 2000 California sea lions (*Zalophus californianus*), 200 harbor seals (*Phoca vitulina richardsi*), and 50 northern fur seals (*Callorhinus ursinus*) annually for five years on the Channel Islands, by capture to tag-and instrument, mark, weigh, blood sample and release. An unspecified number of the species listed above may be harassed during ground and aerial surveys.

Written data or views, or requests for a public hearing on any one of these requests should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on a particular request would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above actions are available for review upon written request or by appointment in the Permits Division, Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Highway, room 7324, Silver Spring, MD 20910 (301/713-2289);

(P522 and P319C): Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Blvd., St. Petersburg, FL 33702 (813/893-3141);

(P278): Southwest Region, National Marine Fisheries Service, NOAA, 501 W. Ocean Blvd., Long Beach, California 90802-4213 (310/980-4015);

(P522): Alaska Region, National Marine Fisheries Service, NOAA, Federal Annex, 9109 Mendenhall Mall Rd., suite 6 Juneau, AK 99802 (907/586-7221); and

(P522): Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE., BIN 15700, Seattle, WA 98115 (206/526-6150).

Dated: November 6, 1992.

**Nancy Foster,**  
Acting Deputy Assistant Administrator for Fisheries.

[FR Doc. 92-27601 Filed 11-13-92; 8:45 am]

BILLING CODE 3510-22-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

November 9, 1992.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** November 12, 1992.

#### FOR FURTHER INFORMATION CONTACT:

Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6703. For information on embargoes and quota re-openings, call (202) 482-3715.

#### SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 60976, published on November 29, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Ronald I. Levin,**

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 9, 1992.

Commissioner of Customs,  
Department of the Treasury, Washington, DC 20229.

**Dear Commissioner:** This directive amends, but does not cancel, the directive issued to you on November 22, 1991, by the Chairman, Committee for the Implementation of Textile

Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on November 12, 1992, you are directed to amend further the directive dated November 22, 1991, to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit <sup>1</sup>
Levels not in group	
433.....	24,163 dozen.
434.....	13,766 dozen.
442.....	43,425 dozen.
444.....	202,820 numbers.
633.....	52,164 dozen.
659-C <sup>2</sup> .....	393,689 kilograms.
607.....	818,776 kilograms.
Sublevel in Group II	
643.....	462,434 numbers.

<sup>1</sup> The limits have not been adjusted to account for any imports exported after December 31, 1991.

<sup>2</sup> Category 659-C: only HTS numbers  
6103.23.0055, 6103.43.2020, 6103.43.2025,  
6103.49.2000, 6103.49.3038, 6104.63.1020,  
6104.63.1030, 6104.69.1000, 6104.69.3014,  
6114.30.3044, 6114.30.3054, 6203.43.2010,  
6203.43.2090, 6203.49.1010, 6203.49.1090,  
6204.63.1510, 6204.69.1010, 6210.10.4015,  
6211.33.0010, 6211.33.0017 and 6211.43.0010.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

**Ronald I. Levin,**

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-27711 Filed 11-13-92; 8:45 am]

BILLING CODE 3510-DR-F

### Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

November 9, 1992.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

**EFFECTIVE DATE:** January 1, 1993.

#### FOR FURTHER INFORMATION CONTACT:

Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the



quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6716. For information on embargoes and quota re-openings, call (202) 482-3715.

#### SUPPLEMENTARY INFORMATION:

**Authority:** Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated May 31 and June 5, 1986, as amended and extended, between the Governments of the United States and the Republic of Singapore establishes limits for the period beginning on January 1, 1993 and extending through December 31, 1993.

A copy of the agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States** (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Information regarding the 1993 **CORRELATION** will be published in the **Federal Register** at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Ronald I. Levin,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

#### Committee for the Implementation of Textile Agreements

November 9, 1992.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1991; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated May 31 and June 5, 1986, as amended and extended, between the Governments of the United States and the Republic of Singapore; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1993, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool

and man-made fiber textile products in the following categories, produced or manufactured in Singapore and exported during the twelve-month period beginning on January 1, 1993 and extending through December 31, 1993, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
239.....	419,711 kilograms.
331.....	394,780 dozen pairs.
334.....	62,905 dozen.
335.....	189,220 dozen.
338/339.....	1,039,466 dozen of which not more than 607,473 dozen shall be in Category 338 and not more than 675,434 dozen shall be in Category 339.
340.....	727,472 dozen.
341.....	182,924 dozen.
342.....	112,568 dozen.
347/348.....	885,509 dozen of which not more than 553,443 dozen shall be in Category 347 and not more than 430,456 dozen shall be in Category 348.
435.....	6,517 dozen.
604 <sup>1</sup> .....	792,163 kilograms.
631.....	422,130 dozen pairs.
634.....	240,161 dozen.
635.....	245,766 dozen.
638.....	882,072 dozen.
639.....	3,161,226 dozen.
640.....	155,090 dozen.
641.....	252,969 dozen.
645/646.....	135,286 dozen.
647.....	498,828 dozen.
648.....	1,463,138 dozen.
Group II	
200-229, 237, 300/301, 313-330, 332, 333/633, 336, 345, 349, 350, 351/651, 352/652, 353/354/653/654, 359-369, 400-434, 436, 438, 439, 440-444, 445/446, 447, 448, 459-469, 600-603, 606, 607, 611-630, 632, 636, 642-644, 649, 650, 659-S <sup>1</sup> , 659-V <sup>2</sup> , 659-O <sup>3</sup> and 665-670, as a group.	38,461,859 square meters equivalent.
Sublevels within Group II	
200.....	251,996 kilograms.
201.....	259,196 kilograms.
218.....	1,672,255 square meters.
219.....	1,672,255 square meters.
220.....	1,672,255 square meters.
222.....	357,305 kilograms.
223.....	119,366 kilograms.
224.....	1,672,255 square meters.
225.....	1,672,255 square meters.
226.....	1,672,255 square meters.
227.....	1,672,255 square meters.
229.....	122,592 kilograms.
237.....	222,273 dozen.
300/301.....	197,214 kilograms.
313.....	1,672,255 square meters.
314.....	1,672,255 square meters.
315.....	1,672,255 square meters.
317.....	1,672,255 square meters.

Category	Twelve-month restraint limit
326.....	1,672,255 square meters.
330.....	1,176,471 dozen.
332.....	434,783 dozen pairs.
333/633.....	41,500 dozen.
336.....	70,000 dozen.
345.....	54,348 dozen.
349.....	416,667 dozen.
350.....	39,216 dozen.
351/651.....	38,462 dozen.
352/652.....	148,148 dozen.
353/354/653/654.....	48,426 dozen.
359.....	197,214 kilograms.
360.....	1,818,182 numbers.
361.....	322,581 numbers.
362.....	289,855 numbers.
363.....	4,000,000 numbers.
369.....	197,214 kilograms.
400.....	34,019 kilograms.
410.....	125,419 square meters.
414.....	45,359 kilograms.
431.....	71,429 dozen pairs.
432.....	53,571 dozen pairs.
433.....	4,167 dozen.
434.....	6,009 dozen.
436.....	3,049 dozen.
438.....	10,000 dozen.
439.....	20,012 kilograms.
440.....	6,250 dozen.
442.....	10,000 dozen.
443.....	33,336 numbers.
444.....	33,336 numbers.
445/446.....	20,000 dozen.
447.....	8,333 dozen.
448.....	8,333 dozen.
459.....	34,019 kilograms.
464.....	52,338 kilograms.
465.....	139,355 square meters.
469.....	34,019 kilograms.
600.....	259,196 kilograms.
603.....	266,819 kilograms.
606.....	83,228 kilograms.
607.....	259,196 kilograms.
611.....	1,672,255 square meters.
613.....	1,672,255 square meters.
614.....	1,672,255 square meters.
615.....	1,672,255 square meters.
617.....	1,672,255 square meters.
618.....	1,672,255 square meters.
619.....	1,672,255 square meters.
620.....	1,672,255 square meters.
621.....	116,306 kilograms.
622.....	1,672,255 square meters.
624.....	1,672,255 square meters.
625.....	1,672,255 square meters.
626.....	1,672,255 square meters.
627.....	1,672,255 square meters.
628.....	1,672,255 square meters.
629.....	1,672,255 square meters.
630.....	1,176,471 dozen.
632.....	434,783 dozen pairs.
636.....	140,000 dozen.
642.....	234,951 dozen.
643.....	444,444 numbers.
644.....	444,444 numbers.
649.....	416,667 dozen.
650.....	39,216 dozen.
659-S.....	145,150 kilograms.
659-V.....	145,150 kilograms.
659-O.....	145,150 kilograms.
665.....	1,858,061 square meters.
666.....	116,306 kilograms.
669.....	116,306 kilograms.
670.....	453,592 kilograms.

<sup>1</sup> Category 659-S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

<sup>2</sup> Category 659-V: only HTS numbers 6110.30.1030, 6110.30.1040, 6110.30.2030, 6110.30.2040, 6110.30.3030, 6110.30.3035,



6110.90.0052, 6110.90.0054, 6201.93.2020,  
6202.93.2020, 6211.33.0054 and 6211.43.0080.

<sup>3</sup> Category 659-O: all HTS numbers except  
6112.31.0010, 6112.31.0020, 6112.41.0010,  
6112.41.0020, 6112.41.0030, 6112.41.0040,  
6211.11.1010, 6211.11.1020, 6211.12.1010,  
6211.12.1020 (Category 659-S); 6110.30.1030,  
6110.30.1040, 6110.30.2030, 6110.30.2040,  
6110.30.3030, 6110.30.3035, 6110.90.0052,  
6110.90.0054, 6201.93.2020, 6202.93.2020,  
6211.33.0054 and 6211.43.0080 (Category 659-V).

Imports charged to these category limits for the period January 1, 1992 through December 31, 1992 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The conversion factor for merged Categories 352/652 is 11.3 square meters equivalent per dozen.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the bilateral agreement, effected by exchange of notes dated May 31 and June 5, 1986, as amended and extended, between the Governments of the United States and the Republic of Singapore.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 92-27712 Filed 11-13-92; 8:45 am]

BILLING CODE 3510-DR-F

# **Announcement of Import Limits for Certain Cotton, Wool, and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Turkey**

November 9, 1992.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing new agreement year limits.

**EFFECTIVE DATE:** January 1, 1993.

## **FOR FURTHER INFORMATION CONTACT:**

Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6718. For information on embargoes and quota re-openings, call (202) 482-3715.

## **SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Textile Agreement, effected by exchange of notes dated July 29 and August 6, 1991, between the Governments of the United States and the Republic of Turkey establishes limits for the period beginning on January 1, 1993 and extending through December 31, 1993.

A copy of the current bilateral agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States** (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Information regarding the 1993 **CORRELATION** will be published in the **Federal Register** at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

## **Committee for the Implementation of Textile Agreements**

November 9, 1992.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1991; pursuant to the Bilateral Textile Agreement, effected by exchange of notes dated July 29 and August 6, 1991, between the Governments of the United States and the Republic of Turkey; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1993, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Turkey and exported during the twelve-month period which begins on January 1, 1993 and extends through December 31, 1993, in excess of the following restraint limits:

Category	Twelve-month restraint limit
219, 313, 314, 315, 317, 326, 617, 625, 626, 627 and 628, as a group.	124,719,600 square meters of which not more than 28,500,971 square meters shall be in 219; 34,834,520 square meters shall be in 313; 20,267,357 square meters shall be in 314; 27,234,262 square meters shall be in 315; 28,500,971 square meters shall be in 317; 3,166,774 square meters shall be in 326; 19,000,648 square meters shall be in 617; 3,166,774 square meters shall be in 625; 3,166,774 square meters shall be in 626; 3,166,774 square meters shall be in 627; 3,166,774 square meters shall be in 628.
Limits not in group	
200.....	1,202,565 kilograms.
300/301.....	5,855,209 kilograms.
335.....	252,810 dozen.
336/636.....	595,508 dozen.
338/339/638/639.....	3,707,880 dozen of which not more than 1,853,940 dozen shall be in Cate- gories 338-S/339-S/ 638-S/639-S <sup>1</sup> .
340/640.....	1,243,840 dozen of which not more than 353,765 dozen shall be in shirts made from fabric of two or more colors in the warp and/or the filling in Categories 340-Y/640- Y <sup>2</sup> .
341/641.....	1,228,351 dozen of which not more than 429,923 dozen shall be in blouses made from fabric of two or more colors in the warp and/or the fill- ing in Categories 341-Y/ 641-Y <sup>3</sup> .
342/642.....	662,924 dozen.
347/348.....	3,606,756 dozen of which not more than 1,254,587 dozen shall be in trou- sers in Categories 347- T/348-T <sup>4</sup> .
350.....	375,979 dozen.
351/651.....	601,126 dozen.
361.....	1,264,050 numbers.
369-S <sup>5</sup> .....	1,306,787 kilograms.
410/624.....	1,040,502 square meters of which not more than 673,266 square meters shall be in Category 410.
448.....	35,704 dozen.
604.....	1,508,416 kilograms.

<sup>1</sup> Category 338-S: only HTS numbers  
6103.22.0050, 6105.10.0010, 6105.10.0030,  
6105.90.3010, 6109.10.0027, 6110.20.1025,  
6110.20.2040, 6110.20.2065, 6110.90.0068,  
6112.11.0030 and 6114.20.0005; Category 339-S:  
only HTS numbers 6104.22.0060, 6104.29.2049,  
6106.10.0010, 6106.10.0030, 6106.90.2010,  
6106.90.3010, 6109.10.0070, 6110.20.1030,  
6110.20.2045, 6110.20.2075, 6110.90.0070,  
6112.11.0040, 6114.20.0010 and 6117.90.0022; Cat-  
egory 638-S: all HTS numbers except 6109.90.1007,  
6109.90.1009, 6109.90.1013 and 6109.90.1025; Cat-  
egory 639-S: all HTS numbers except 6109.90.1050,  
6109.90.1060, 6109.90.1065 and 6109.90.1070.

<sup>2</sup> Category 340-Y: only HTS numbers  
6205.20.2015, 6205.20.2020, 6205.20.2046,



6205.20.2050 and 6205.20.2060; Category 640-Y only HTS numbers 6205.30.2010 and 6205.30.2020.  
<sup>3</sup> Category 341-Y only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030; Category 641-Y only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025; Category 641-Y only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

<sup>4</sup> Category 347-T only HTS numbers  
 6103.19.2015, 6103.19.4020, 6103.22.0030,  
 6103.42.1020, 6103.42.1040, 6103.49.3010,  
 6112.11.0050, 6113.00.0038, 6203.19.1020,  
 6203.19.4020, 6203.22.3020, 6203.42.4005,  
 6203.42.4010, 6203.42.4015, 6203.42.4025,  
 6203.42.4035, 6203.42.4045, 6203.49.3020,  
 6210.40.2035, 6211.20.1520, 6211.20.3010 and  
 6211.32.0040; Category 348-T only HTS numbers  
 6104.12.0030, 6104.19.2030, 6104.22.0040,  
 6104.29.2034, 6104.62.2010, 6104.62.2025,  
 6104.69.3022, 6112.11.0060, 6113.00.0042,  
 6117.90.0042, 6204.12.0030, 6204.19.3030,  
 6204.22.3040, 6204.29.4034, 6204.62.3000,  
 6204.62.4005, 6204.62.4010, 6204.62.4020,  
 6204.62.4030, 6204.62.4040, 6204.62.4050,  
 6204.69.3010, 6204.69.9010, 6210.50.2035,  
 6211.20.1550, 6211.20.6010, 6211.42.0030 and  
 6217.90.0050  
<sup>5</sup> Category 369-S only HTS number  
 6307.10.2005

Imports charged to these category limits for the period January 1, 1992 through December 31, 1992 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 92-27713 Filed 11-13-92; 8:45 am]

BILLING CODE 3510-DR-F

On October 31, 1992, under the terms of Section 204 of the Agricultural Act of 1956, as amended, the Government of the United States requested consultations with the Government of Bahrain with respect to cotton and man-made fiber knit shirts in Categories 338/339/638/639, produced or manufactured in Bahrain.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of Bahrain, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 338/339/638/639, produced or manufactured in Bahrain and exported during the twelve-month period which began on October 31, 1992 and extends through October 30, 1993, at a level of not less than 319,245 dozen.

A summary market statement concerning Categories 338/339/638/639 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 338/339/638/639, or to comment on domestic production or availability of products included in Categories 338/339/638/639, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Bahrain.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning

Categories 338/339/638/639. Should such a solution be reached in consultations with the Government of Bahrain, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States** (see **Federal Register** notice 56 FR 60101, published on November 27, 1991).

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

#### Market Statement—Bahrain

Category 338/339/638/639—Cotton and Man-Made Fiber Knit Shirts

October 1992

#### Import Situation and Conclusion

U.S. imports of cotton and man-made fiber knit shirts, Category 338/339/638/639, from Bahrain reached 319,245 dozen in year ending July 1992, 35 percent above the 236,564 dozen imported in the year ending July 1991. During the first seven months of 1992, Category 338/339/638/639 imports from Bahrain reached 237,315 dozen, nearly double the January-July 1991 level, and 17 percent greater than Bahrain's total calendar year 1991 imports.

The sharp and substantial increase in Category 338/339/638/639 imports from Bahrain is causing disruption in the U.S. market for cotton and man-made fiber knit shirts.

#### U.S. Production, Import Penetration, and Market Share

U.S. production of cotton and man-made fiber knit shirts, Category 338/339/638/639, declined 5 percent from 94,959,000 dozen in 1987 to 90,327,000 dozen in 1991. In contrast, U.S. imports of cotton and man-made fiber knit shirts, Category 338/339/638/639, increased 39 percent, from 51,847,000 dozen in 1987 to 72,082,000 dozen in 1991. Imports surged in 1992, increasing 25 percent over the January-July 1991 level and reaching 82,393,000 dozen in the year ending July 1992, 21 percent above the year ending July 1991 level and the highest 12 month level on record. The ratio of imports to domestic production rose from 55 percent in 1987 to 80 percent in 1991. The domestic manufacturers' share of the U.S. market fell from 65 percent in 1987 to 56 percent in 1991, a decline of 9 percentage points.

#### Duty-Paid Value and U.S. Producers' Price

Approximately 73 percent of Category 338/339/638/639 imports from Bahrain during the year ending July 1992 entered the U.S. under HTSUSA numbers 6110.20.2075—women's and girls' cotton

#### Request for Public Comments on Bilateral Textile Consultations with the Government of Bahrain on Certain Cotton and Man-Made Fiber Textile Products

November 9, 1992.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Notice.

#### FOR FURTHER INFORMATION CONTACT:

Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on categories for which consultations have been requested, call (202) 482-3740.

#### SUPPLEMENTARY INFORMATION:

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).



knit shirts, and 6109.10.0040—women's cotton knit T-shirts. These knit shirts entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable knit shirts.

[FR Doc. 92-27729 Filed 11-13-92; 8:45 am]

BILLING CODE 3510-DR-F

### Request for Public Comments on Bilateral Textile Consultations with the Government of Bulgaria on Certain Wool Textile Products

November 6, 1992.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Notice.

#### FOR FURTHER INFORMATION CONTACT:

Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on categories for which consultations have been requested, call (202) 482-3740.

#### SUPPLEMENTARY INFORMATION:

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On October 27, 1992, under the terms of Section 204 of the Agricultural Act of 1956, as amended, the Government of the United States requested consultations with the Government of Bulgaria with respect to women's and girls' wool trousers, breeches and shorts in Category 448, produced or manufactured in Bulgaria.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of Bulgaria, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of wool textile products in Category 448, produced or manufactured in Bulgaria and exported during the twelve-month period which began on October 27, 1992 and extends through October 26, 1993, at a level of not less than 8,696 dozen.

A summary market statement concerning Category 448 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 448, or to comment on domestic production or availability of products included in Category 448, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman,

Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Bulgaria.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Category 448. Should such a solution be reached in consultations with the Government of Bulgaria, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States** (see **Federal Register** notice 56 FR 60101, published on November 27, 1991).

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

#### Market Statement—Bulgaria

**Category 448—Women's and Girls Wool Trousers, Slacks and Shorts**  
October 1992

#### Import Situation and Conclusion

U.S. imports of women's and girls' wool trousers, slacks and shorts, Category 448, from Bulgaria reached 8,696 dozen in year ending July 1992. Bulgaria began shipping women's and girls' wool trousers to the U.S. in December 1991 and in just eight months—December 1991-July 1992—shipped 8,696 dozen. During the first seven months of 1992, Category 448 imports from Bulgaria reached 7,448

dozen. Bulgaria became the eight largest supplier of women's and girls' wool trousers, slacks and shorts to the U.S. market, accounting for 4 percent of total Category 448 imports during the January-July 1992 period.

The sharp and substantial increase in Category 448 imports from Bulgaria is causing disruption in the U.S. market for women's and girls' wool trousers, slacks and shorts.

#### U.S. Production, Import Penetration, and Market Share

U.S. production of women's and girls' wool trousers, slacks and shorts, Category 448, increased in 1988 and then declined in 1989, 1990, and 1991. Production fell to 204,000 dozen in 1991, 14 percent below the 1990 level and 48 percent below the 1987 level. This decline continued in 1992, with production falling to 195,000 for the year ending June 1992, 12 percent below the year ending June 1991 level. In contrast, U.S. imports of women's and girls' wool trousers, slacks and shorts, Category 448, increased 15 percent, from 299,000 dozen in 1987 to 345,000 dozen in 1991. Imports surged in 1992, increasing 25 percent over the January-July 1991 level and reaching 379,000 dozen in the year ending July 1992, 29 percent above the year ending July 1991 level and the highest 12 month level on record.

The ratio of imports to domestic production more than doubled, increasing from 76 percent in 1987 to 169 percent in 1991. This increase continued in 1992, with the ratio of imports to domestic production reaching 191 percent for the year ending June 1992. The domestic manufacturers' share of the U.S. market fell from 57 percent in 1987 to 37 percent in 1991, a decline of 20 percentage points. This decline continued in 1992, with the domestic manufacturers' share of the U.S. market falling to 34 percent for the year ending June 1992.

#### Duty-Paid Value and U.S. Producers' Price

Approximately 75 percent of Category 448 imports from Bulgaria during the year ending July 1992 entered the U.S. under HTSUSA number 6204.61.0010—women's wool trousers and breeches. These women's wool trousers and breeches entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable women's wool trousers and breeches.

[FR Doc. 92-27655 Filed 11-13-92; 8:45 am]

BILLING CODE 3510-DR-F



**Request for Public Comments on  
Bilateral Textile Consultations with the  
Government of Fiji on Certain Cotton  
and Man-Made Fiber Textile Products**

November 6, 1992.

**AGENCY:** Committee for the  
Implementation of Textile Agreements  
(CITA).

**ACTION:** Notice.

**FOR FURTHER INFORMATION CONTACT:**

Jennifer Tallarico, International Trade  
Specialist, Office of Textiles and  
Apparel, U.S. Department of Commerce,  
(202) 482-4212. For information on  
categories for which consultations have  
been requested, call (202) 482-3740.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March  
3, 1972, as amended; section 204 of the  
Agricultural Act of 1956, as amended (7  
U.S.C. 1854).

On October 30, 1992, under the terms  
of Section 204 of the Agricultural Act of  
1956, as amended, the Government of  
the United States requested  
consultations with the Government of  
Fiji with respect to cotton and man-  
made fiber knit shirts in Categories 338/  
339/638/639, produced or manufactured  
in Fiji.

The purpose of this notice is to advise  
the public that, if no solution is agreed  
upon in consultations with the  
Government of Fiji, the Committee for  
the Implementation of Textile  
Agreements may later establish a limit  
for the entry and withdrawal from  
warehouse for consumption of cotton  
and man-made fiber textile products in  
Categories 338/339/638/639, produced  
or manufactured in Fiji and exported  
during the twelve-month period which  
began on October 30, 1992 and extends  
through October 29, 1993, at a level of  
not less than 437,574 dozen.

A summary market statement  
concerning Categories 338/339/638/639  
follows this notice.

Anyone wishing to comment or  
provide data or information regarding  
the treatment of Categories 338/339/  
638/639, or to comment on domestic  
production or availability of products  
included in Categories 338/339/638/639,  
is invited to submit 10 copies of such  
comments or information to Auggie D.  
Tantillo, Chairman, Committee for the  
Implementation of Textile Agreements,  
U.S. Department of Commerce,  
Washington, DC 20230; ATTN: Helen L.  
LeGrande. The comments received will  
be considered in the context of the  
consultations with the Government of  
Fiji.

Because the exact timing of the  
consultations is not yet certain,

comments should be submitted  
promptly. Comments or information  
submitted in response to this notice will  
be available for public inspection in the  
Office of Textiles and Apparel, room  
H3100, U.S. Department of Commerce,  
14th and Constitution Avenue, NW.,  
Washington, DC.

Further comments may be invited  
regarding particular comments or  
information received from the public  
which the Committee for the  
Implementation of Textile Agreements  
considers appropriate for further  
consideration.

The solicitation of comments  
regarding any aspect of the agreement  
or the implementation thereof is not a  
waiver in any respect of the exemption  
contained in 5 U.S.C. 553(a)(1) relating  
to matters which constitute "a foreign  
affairs function of the United States."

The United States remains committed  
to finding a solution concerning  
Categories 338/339/638/639. Should  
such a solution be reached in  
consultations with the Government of  
Fiji, further notice will be published in  
the *Federal Register*.

A description of the textile and  
apparel categories in terms of HTS  
numbers is available in the

**CORRELATION:** Textile and Apparel  
Categories with the Harmonized Tariff  
Schedule of the United States (see  
*Federal Register* notice 56 FR 60101,  
published on November 27, 1991).

Auggie D. Tantillo,

*Chairman, Committee for the Implementation  
of Textile Agreements.*

**Market Statement—Fiji**

**Category 338/339/638/639—Cotton and Man-  
Made Fiber Knit Shirts**

**October 1992**

*Import Situation and Conclusion*

U.S. imports of cotton and man-made  
fiber knit shirts, Category 338/339/638/  
639, from Fiji reached 437,574 dozen in  
year ending July 1992, 25 percent above  
the 349,118 dozen imported in the year  
ending July 1991. During the first seven  
months of 1992, Category 338/339/638/  
639 imports from Fiji reached 286,608  
dozen, 13 percent above the January-  
July 1991 level.

The sharp and substantial increase in  
Category 338/339/638/639 imports from  
Fiji is causing disruption in the U.S.  
market for cotton and man-made fiber  
knit shirts.

*U.S. Production, Import Penetration, and  
Market Share*

U.S. production of cotton and man-  
made fiber knit shirts, Category 338/  
339/638/639, declined 5 percent from  
94,959,000 dozen in 1987 to 90,327,000  
dozen in 1991. In contrast, U.S. imports  
of cotton and man-made fiber knit

shirts, Category 338/339/638/639,  
increased 39 percent, from 51,847,000  
dozen in 1987 to 72,082,000 dozen in  
1991. Imports surged in 1992, increasing  
25 percent over the January-July 1991  
level and reaching 82,393,000 dozen in  
the year ending July 1992, 21 percent  
above the year ending in July 1991 level  
and the highest 12 month level on  
record. The ratio of imports to domestic  
production rose from 55 percent in 1987  
to 80 percent in 1991. The domestic  
manufacturers' share of the U.S. market  
fell from 65 percent in 1987 to 56 percent  
in 1991, a decline of 9 percentage points.

*Duty-Paid Value and U.S. Producers Price*

Approximately 71 percent of Category  
338/339/638/639 imports from Fiji during  
the year ending July 1992 entered the  
U.S. under HTSUSA numbers  
6110.20.2075—women's and girls' cotton  
knit shirts, 6110.20.2065—men's and  
boys' cotton knit shirts, and  
6109.10.0040—women's cotton knit T-  
shirts. These knit shirts entered the U.S.  
at landed duty-paid values below U.S.  
producers' prices for comparable knit  
shirts.

[FR Doc. 92-27657 Filed 11-13-92; 8:45 am]

BILLING CODE 3510-DR-F

**Request for Public Comments on  
Bilateral Textile Consultations with the  
Government of Guatemala on Certain  
Cotton and Man-Made Fiber Textile  
Products**

November 9, 1992.

**AGENCY:** Committee for the  
Implementation of Textile Agreements  
(CITA).

**ACTION:** Notice.

**FOR FURTHER INFORMATION CONTACT:**

Nicole Bivens Collinson, International  
Trade Specialist, Office of Textiles and  
Apparel, U.S. Department of Commerce,  
(202) 482-4212. For information on  
categories for which consultations have  
been requested, call (202) 482-3740.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March  
3, 1972, as amended; section 204 of the  
Agricultural Act of 1956, as amended (7  
U.S.C. 1854).

On October 30, 1992, under the terms  
of Article 3 of the Arrangement  
Regarding International Trade in  
Textiles, done at Geneva on December  
20, 1973, as further extended on July 31,  
1986, the Government of the United  
States requested consultations with the  
Government of Guatemala with respect  
to cotton and man-made fiber robes and  
dressing gowns in Categories 350/650.



produced or manufactured in Guatemala.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of Guatemala, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 350/650, produced or manufactured in Guatemala and exported during the twelve-month period which began on October 30, 1992 and extends through October 29, 1993, at a level of not less than 48,311 dozen.

A summary market statement concerning Categories 350/650 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 350/650, or to comment on domestic production or availability of products included in Categories 350/650, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Guatemala.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 350/650. Should such a solution be reached in consultations with the Government of Guatemala, further notice will be published in the *Federal Register*.

A description of the textile and apparel categories in terms of HTS

numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see *Federal Register* notice 56 FR 60101, published on November 27, 1991).

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

#### Market Statement—Guatemala

Category 350/650—Cotton and Man-Made Fiber Robes and Dressing Gowns  
October 1992

#### Import Situation and Conclusion

U.S. imports of cotton and man-made fiber robes and dressing gowns, Category 350/650, from Guatemala reached 48,311 dozen in year ending July 1992, 33 percent above the 36,297 dozen imported in the year ending July 1991. During the first seven months of 1992, Category 350/650 imports from Guatemala reached 25,383 dozen, an increase of 12 percent over the January-July 1991 level.

The sharp and substantial increase in Category 350/650 imports from Guatemala is causing disruption in the U.S. market for cotton and man-made fiber robes and dressing gowns.

#### U.S. Production, Import Penetration, and Market Share

U.S. production of cotton and man-made fiber robes and dressing gowns, Category 350/650, declined from 3,385,000 dozen in 1987 to 1,599,000 dozen in 1991, a 53 percent decline. This decline continued in 1992, with U.S. production falling to 586,000 dozen during the first six months of 1992, 13 percent below the January-June 1991 level. In contrast, U.S. imports of cotton and man-made fiber robes and dressing gowns, Category 350/650, increased from 1,342,000 dozen in 1987 to 1,983,000 dozen in 1991, an increase of 48 percent. Category 350/650 imports continued to increase in 1992, up 7 percent in the first seven months of 1992 over the January-July 1991 level.

The ratio of imports to production tripled, increasing from 40 percent in 1987 to 124 percent in 1991. This trend continued in 1992, with the ratio of imports to production reaching 153 percent during the January-June 1992. The domestic manufacturers' share of the U.S. market fell from 72 percent in 1987 to 45 percent in 1991, a decline of 27 percentage points. This decline continued, with the domestic manufacturers' share of the U.S. market falling to 39 percent during the first half of 1992.

#### Duty-Paid Value and U.S. Producers' Price

Approximately 86 percent of Category 350/650 imports from Guatemala during the year ending July 1992 entered the

U.S. under HTSUSA number 6208.91.1010—women's cotton bathrobes and dressing gowns. These bathrobes and dressing gowns entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable bathrobes and dressing gowns.

[FR Doc. 92-27714 Filed 11-13-92; 8:45 am]

BILLING CODE 3510-DR-F

### Request for Public Comments on Bilateral Textile Consultations with the Government of Laos on Certain Cotton and Man-Made Fiber Textile Products

November 6, 1992.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Notice.

#### FOR FURTHER INFORMATION CONTACT:

Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on categories for which consultations have been requested, call (202) 482-3740.

#### SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On October 30, 1992, under the terms of Section 204 of the Agricultural Act of 1956, as amended, the Government of the United States requested consultations with the Government of Laos with respect to men's and boys' cotton and man-made fiber woven shirts in Categories 340/640, produced or manufactured in Laos.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of Laos, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in Laos and exported during the twelve-month period which began on October 30, 1992 and extends through October 29, 1993, at a level of not less than 57,171 dozen.

A summary market statement concerning Categories 340/640 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 340/640, or to comment on domestic production or availability of products included in Categories 340/640, is invited to submit 10 copies of such comments or



information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Laos.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 340/640. Should such a solution be reached in consultations with the Government of Laos, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States** (see **Federal Register** notice 56 FR 60101, published on November 27, 1991).

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

#### **Market Statement—Laos**

**Category 340/640—Men's and Boys' Cotton and Man-Made Fiber Woven Shirts**

**October 1992**

#### *Import Situation and Conclusion*

U.S. imports of men's and boys' cotton and man-made fiber woven shirts, Category 340/640, from Laos reached 57,171 dozen during the year ending July 1992, more than seven times the 7,902 dozen imported during the year ending in July 1991. During the first seven months of 1992, imports of Category 340/640 from Laos reached 40,353 dozen, more than five times the 7,902 dozen imported during the same period a year earlier and 63 percent above Laos's total

calendar year 1991 Category 340/640 imports.

The sharp and substantial increase in Category 340/640 imports from Laos is causing disruption in the U.S. market for men's and boys' cotton and man-made fiber woven shirts.

*U.S. Production, Import Penetration, and Market Share*

U.S. production of men's and boys' cotton and man-made fiber woven shirts, Category 340/640, declined 28 percent falling from 16,401,000 dozen in 1988 to 11,729,000 dozen in 1991. U.S. production during the year ending March 1992 remained relatively even with the year ending March 1991 level. U.S. imports of men's and boys' cotton and man-made fiber woven shirts, Category 340/640, declined in 1990 and 1991. However, Category 340/640 imports surged in 1992, increasing 30 percent in the first seven months of 1992 over the January-July 1991 level and reaching 28,035,769 dozen in the year ending in July 1992, 21 percent above the year ending July 1991 level and the highest 12 month level on record.

The ratio of imports to domestic production increased from 157 percent in 1988 to 205 percent in 1991. This trend continued in 1992, with the ratio of imports to production reaching 208 percent during the year ending March 1992. The domestic manufacturers' share of the market for men's and boys' cotton and man-made fiber woven shirts fell from 39 percent in 1988 to 33 percent in 1991. This decline continued in 1992, with the domestic manufacturer's share of the market falling to 32 percent during the year ending March 1992.

#### *Duty-Paid Value and U.S. Producers' Price*

Approximately 81 percent of Category 340/640 imports from Laos during the year ending July 1992 entered the U.S. under HTSUSA numbers 6205.20.2025—men's cotton dress shirts, other than yarn dyed and 6205.20.2065—men's cotton shirts, other than dress shirts and other than yarn dyed. These shirts entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable shirts.

[FR Doc. 92-27654 Filed 11-13-92; 8:45 am]

**BILLING CODE 3510-DR-F**

#### **Request for Public Comments on Bilateral Textile Consultations with the Government of Lebanon on Certain Cotton and Man-Made Fiber Textile Products**

November 6, 1992.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

#### **ACTION:** Notice.

#### **FOR FURTHER INFORMATION CONTACT:**

Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on categories for which consultations have been requested, call (202) 482-3740.

#### **SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On October 30, 1992, under the terms of Section 204 of the Agricultural Act of 1956, as amended, the Government of the United States requested consultations with the Government of Lebanon with respect to cotton and man-made fiber knit shirts in Categories 338/339/638/639, produced or manufactured in Lebanon.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of Lebanon, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 338/339/638/639, produced or manufactured in Lebanon and exported during the twelve-month period which began on October 30, 1992 and extends through October 29, 1993, at a level of not less than 298,817 dozen.

A summary market statement concerning Categories 338/339/638/639 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 338/339/638/639, or to comment on domestic production or availability of products included in Categories 338/339/638/639, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Lebanon.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.



Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 338/339/638/639. Should such a solution be reached in consultations with the Government of Lebanon, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States** (see **Federal Register** notice 56 FR 60101, published on November 27, 1991).

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

#### **Market Statement—Lebanon**

**Category 338/339/638/639—Cotton and Man-Made Fiber Knit Shirts**

**October 1992**

#### *Import Situation and Conclusion*

U.S. imports of cotton and man-made fiber knit shirts, Category 338/339/638/639, from Lebanon reached 298,817 dozen in year ending July 1992, nearly double the 156,783 dozen imported in the year ending July 1991. During the first seven months of 1992, Category 338/339/638/639 imports from Lebanon reached 220,507 dozen, nearly triple the January-July 1991 level, and 39 percent greater than Lebanon's total calendar year 1991 imports.

The sharp and substantial increase in Category 338/339/638/639 imports from Lebanon is causing disruption in the U.S. market for cotton and man-made fiber knit shirts.

#### *U.S. Production, Import Penetration, and Market Share*

U.S. production of cotton and man-made fiber knit shirts, Category 338/339/638/639, declined 5 percent from 94,959,000 dozen in 1987 to 90,327,000 dozen in 1991. In contrast, U.S. imports of cotton and man-made fiber knit shirts, Category 338/339/638/639, increased 39 percent, from 51,847,000 dozen in 1987 to 72,082,000 dozen in 1991. Imports surged in 1992, increasing 25 percent over the January-July 1991 level and reaching 82,393,000 dozen in

the year ending July 1992, 21 percent above the year ending in July 1991 level and the highest 12 month level on record. The ratio of imports to domestic production rose from 55 percent in 1987 to 80 percent in 1991. The domestic manufacturers' share of the U.S. market fell from 65 percent in 1987 to 56 percent in 1991, a decline of 9 percentage points.

#### *Duty-Paid Value and U.S. Producers' Price*

Approximately 77 percent of Category 338/339/638/639 imports from Lebanon during the year ending July 1992 entered the U.S. under HTSUSA numbers 6109.10.0012—mens' knit cotton T-shirts, and 6109.10.0040—women's cotton knit T-shirts. These knit shirts entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable knit shirts.

[FR Doc. 92-27658 Filed 11-13-92; 8:45 am]

**BILLING CODE 3510-DR-F**

#### **Request for Public Comments on Bilateral Textile Consultations with the Government of Lesotho on Certain Cotton and Man-Made Fiber Textile Products**

November 6, 1992.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Notice.

#### **FOR FURTHER INFORMATION CONTACT:**

Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on categories for which consultations have been requested, call (202) 482-3740.

#### **SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11851 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On October 28, 1992, under the terms of Section 204 of the Agricultural Act of 1956, as amended, the Government of the United States requested consultations with the Government of Lesotho with respect to cotton and man-made fiber knit shirts in Categories 338/339/638/639 and cotton and man-made fiber trousers, breeches and shorts in Categories 347/348/647/648, produced or manufactured in Lesotho.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of Lesotho, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in

Categories 338/339/638/639 and 347/348/647/648, produced or manufactured in Lesotho and exported during the twelve-month period which began on October 28, 1992 and extends through October 27, 1993, at levels of not less than 810,225 dozen (Categories 338/339/638/639) and 269,784 dozen (Categories 347/348/647/648).

Summary market statements concerning these categories follow this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 338/339/638/639 and 347/348/647/648, or to comment on domestic production or availability of products included in these categories, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Lesotho.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 338/339/638/639 and 347/348/647/648. Should such a solution be reached in consultations with the Government of Lesotho, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States** (see



Federal Register notice 56 FR 60101, published on November 27, 1991).

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

#### Market Statement—Lesotho

Category 338/339/638/639—Cotton and Man-Made Fiber Knit Shirts

October 1992

#### *Import Situation and Conclusion*

U.S. imports of cotton and man-made fiber knit shirts, Category 338/339/638/639, from Lesotho reached 810,225 dozen in year ending July 1992, 62 percent above the 500,463 dozen imported in the year ending July 1991. During the first seven months of 1992, Category 338/339/638/639 imports from Lesotho reached 522,658 dozen, nearly double the January-July 1991 level, and 95 percent of Lesotho's total calendar year 1991 imports.

The sharp and substantial increase in Category 338/339/638/639 imports from Lesotho is causing disruption in the U.S. market for cotton and man-made fiber knit shirts.

*U.S. Production, Import Penetration, and Market Share*

U.S. production of cotton and man-made fiber knit shirts, Category 338/339/638/639, declined 5 percent from 94,959,000 dozen in 1987 to 90,327,000 dozen in 1991. In contrast, U.S. imports of cotton and man-made fiber knit shirts, Category 338/339/638/639, increased 39 percent, from 51,847,000 dozen in 1987 to 72,082,000 dozen in 1991. Imports surged in 1992, increasing 25 percent over the January-July 1991 level and reaching 82,393,000 dozen in the year ending July 1992, 21 percent above the year ending in July 1991 level and the highest 12 month level on record. The ratio of imports to domestic production rose from 55 percent in 1987 to 80 percent in 1991. The domestic manufacturers' share of the U.S. market fell from 65 percent in 1987 to 56 percent in 1991, a decline of 9 percentage points.

#### *Duty-Paid Value and U.S. Producers' Price*

Approximately 72 percent of Category 338/339/638/639 imports from Lesotho during the year ending July 1992 entered the U.S. under HTSUSA numbers 6106.10.0010—women's cotton blouses or shirts knitted or crocheted and 6110.20.2075—women's and girls' cotton knit shirts. These knit shirts entered the U.S. at landed duty-paid values below

U.S. producers' prices for comparable knit shirts.

#### Market Statement—Lesotho

Category 347/348/647/648—Cotton and Man-Made Trousers, Breeches and Shorts

October 1992

#### *Import Situation and Conclusion*

U.S. imports of cotton and man-made fiber trousers, breeches and shorts, Category 347/348/647/648, from Lesotho reached 269,784 dozen in year ending July 1992, over two and one-half times the 105,694 dozen imported in the year ending July 1991. During the first seven months of 1992, Category 347/348/647/648 imports from Lesotho reached 186,587 dozen, more than two and one-half times the January-July 1991 level, and 22 percent greater than Lesotho's total calendar year 1991 imports.

The sharp and substantial increase in Category 347/348/647/648 imports from Lesotho is causing disruption in the U.S. market for cotton and man-made fiber trousers, breeches and shorts.

*U.S. Production, Import Penetration, and Market Share*

U.S. production of cotton and man-made fiber trousers, breeches and shorts, Category 347/348/647/648, declined 12 percent from 90,258,000 dozen in 1987 to 79,242,000 dozen in 1991. In contrast, U.S. imports of cotton and man-made fiber trousers, breeches and shorts, Category 347/348/647/648, increased 25 percent, from 50,681,000 dozen in 1987 to 63,256,000 dozen in 1991. Imports surged in 1992, increasing 35 percent in the first seven months of 1992 over the January-July 1991 level and reaching 76,102,000 dozen in the year ending in July 1992, 30 percent above the year ending July 1991 level and the highest 12 month level on record. The ratio of imports to domestic production rose from 56 percent in 1987 to 80 percent in 1991. The domestic manufacturers' share of the U.S. market fell from 64 percent in 1987 to 56 percent in 1991, a decline of 8 percentage points.

#### *Duty-Paid Value and U.S. Producers' Price*

Approximately 71 percent of Category 347/348/647/648 imports from Lesotho during the year ending July 1992 entered the U.S. under HTSUSA numbers 6103.42.1050—men's knit cotton shorts, 6204.62.4010—women's cotton woven blue denim trousers and breeches, 6204.62.4020—other women's cotton woven trousers other than of corduroy and denim, and 6204.62.4055—women's cotton woven shorts. These trousers, breeches, and shorts entered the U.S. at landed duty-paid values below U.S.

producers' prices for comparable trousers, breeches, and shorts.

[FR Doc. 92-27656 Filed 11-13-92; 8:45 am]

BILLING CODE 3510-DR-F

### Shipments of Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Apparel in Excess of Bilateral Agreement Limits

November 9, 1992.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Notice.

#### **FOR FURTHER INFORMATION CONTACT:**

Ross Arnold or Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212.

#### **SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

It has come to CITA's attention that some textile and apparel products may be shipped in excess of 1992 limits with the expectation that they will be entered and charged against the limits of the 1993 quota year. This notice serves to remind interested parties that charges against the limits of U.S. bilateral textile and apparel agreements are by date of export and not date of entry. Shipments made in one year in excess of agreed limits are in violation of the terms of the bilateral agreement.

It has been the practice of the Committee for the Implementation of Textile Agreements (CITA) to charge merchandise exceeding the limit(s) established for one agreement period, if entered or withdrawn from warehouse for consumption, to the limit(s) established for the immediately subsequent agreement period. The purpose of this notice is to advise the public that CITA reserves the right under the bilateral agreements to deny entry permanently to goods which have been overshipped, or to allow entry and charge to the following restraint period merchandise exported during a prior agreement period which exceeds the restraint limit(s) established for that period.

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 92-27710 Filed 11-13-92; 8:45 am]

BILLING CODE 3510-DR-F



**Request for Public Comments on  
Bilateral Textile Consultations with the  
Government of the United Arab  
Emirates on Certain Cotton and Man-  
Made Fiber Textile Products**

November 6, 1992.

**AGENCY:** Committee for the  
Implementation of Textile Agreements  
(CITA).

**ACTION:** Notice.

**FOR FURTHER INFORMATION CONTACT:**

Jennifer Tallarico, International Trade  
Specialist, Office of Textiles and  
Apparel, U.S. Department of Commerce,  
(202) 482-4212. For information on  
categories for which consultations have  
been requested, call (202) 482-3740.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March  
3, 1972, as amended; section 204 of the  
Agricultural Act of 1956, as amended (7  
U.S.C. 1854).

On October 28, 1992, under the terms  
of Section 204 of the Agricultural Act of  
1956, as amended, the Government of  
the United States requested  
consultations with the Government of  
the United Arab Emirates with respect  
to cotton and man-made fiber textile  
products in Categories 326, 335/635 and  
369-S, produced or manufactured in the  
United Arab Emirates.

The purpose of this notice is to advise  
the public that, if no solution is agreed  
upon in consultations with the  
Government of the United Arab  
Emirates, the Committee for the  
Implementation of Textile Agreements  
may later establish limits for the entry  
and withdrawal from warehouse for  
consumption of cotton and man-made  
fiber textile products in Categories 326,  
335/635 and 369-S, produced or  
manufactured in the United Arab  
Emirates and exported during the  
twelve-month period which began on  
October 28, 1992 and extends through  
October 27, 1993, at levels of not less  
than 980,188 square meters (Category  
326), 82,745 dozen (Categories 335/635)  
and 131,323 kilograms (Category 369-S).

Summary market statements  
concerning Categories 326, 335/635 and  
369-S follow this notice.

Anyone wishing to comment or  
provide data or information regarding  
the treatment of Categories 326, 335/635  
and 369-S, or to comment on domestic  
production or availability of products  
included in these categories, is invited to  
submit 10 copies of such comments or  
information to Auggie D. Tantillo,  
Chairman, Committee for the  
Implementation of Textile Agreements,  
U.S. Department of Commerce,  
Washington, DC 20230; ATTN: Helen L.

LeGrande. The comments received will  
be considered in the context of the  
consultations with the Government of  
the United Arab Emirates.

Because the exact timing of the  
consultations is not yet certain,  
comments should be submitted  
promptly. Comments or information  
submitted in response to this notice will  
be available for public inspection in the  
Office of Textiles and Apparel, room  
H3100, U.S. Department of Commerce,  
14th and Constitution Avenue, NW.,  
Washington, DC.

Further comments may be invited  
regarding particular comments or  
information received from the public  
which the Committee for the  
Implementation of Textile Agreements  
considers appropriate for further  
consideration.

The solicitation of comments  
regarding any aspect of the agreement  
or the implementation thereof is not a  
waiver in any respect of the exemption  
contained in 5 U.S.C. 553(a)(1) relating  
to matters which constitute "a foreign  
affairs function of the United States."

The United States remains committed  
to finding a solution concerning  
Categories 326, 335/635 and 369-S.  
Should such a solution be reached in  
consultations with the Government of  
the United Arab Emirates, further notice  
will be published in the **Federal  
Register**.

A description of the textile and  
apparel categories in terms of HTS  
numbers is available in the  
**CORRELATION: Textile and Apparel  
Categories with the Harmonized Tariff  
Schedule of the United States** (see  
**Federal Register** notice 56 FR 60101,  
published on November 27, 1991).

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation  
of Textile Agreements.*

**Market Statement—United Arab Emirates  
Category 326—Cotton Sateen Fabric  
October 1992**

**Import Situation and Conclusion**

U.S. imports of cotton sateen fabric,  
Category 326, from the United Arab  
Emirates began in February 1992 and in  
just six months—February 1992-July  
1992—surged to 980,188 square meters.  
The United Arab Emirates became the  
eight largest supplier of cotton sateen  
fabric to the U.S. market, accounting for  
three percent of total Category 326  
imports during the first seven months of  
1992.

The sharp and substantial increase in  
Category 326 imports from the United

Arab Emirates is disrupting the U.S.  
market for cotton sateen fabric.

**Import Penetration and Market Share**

U.S. production of cotton sateen  
fabric, Category 326, dropped to 33,539  
thousand square meters in 1991, 24  
percent below the 1990 level and 14  
percent below the 1989 level. U.S.  
imports of cotton sateen fabric reached  
47,173 thousand square meters in 1991,  
four percent above the 1990 level and  
nearly equal to the 1989 level.

The U.S. producers' share of the  
cotton sateen fabric market was 42  
percent in 1991, three percentage points  
below their 1989 share. The ratio of  
imports to domestic production  
increased from 123 percent in 1989 to  
141 percent in 1991.

**Duty-Paid Value and U.S. Producers' Price**

All of Category 326 imports from the  
United Arab Emirates during the year  
ending July 1992 entered the U.S. under  
HTSUSA numbers 5208.19.2020—85  
percent or more by weight cotton,  
unbleached sateen weave, weighing less  
than 200 grams per square meter and  
5209.19.0020—85 percent or more by  
weight cotton, unbleached sateen  
weave, weighing more than 200 grams  
per square meter. These fabrics entered  
the U.S. at landed duty-paid values  
below U.S. producers' prices for  
comparable cotton sateen fabrics.

**Market Statement—United Arab Emirates  
Category 335/635—Cotton and Man-Made  
Fiber Women's and Girls' Coats  
October 1992**

**Import Situation and Conclusion**

U.S. imports of cotton and man-made  
fiber women's and girls' coats, Category  
335/635, from the United Arab Emirates  
reached 82,745 dozen in year ending July  
1992, nearly five times the 17,244 dozen  
imported in the year ending July 1991.  
During the first seven months of 1992,  
Category 335/635 imports from the  
United Arab Emirates reached 51,598  
dozen, over eight times the January-July  
1991 level, and 37 percent greater than  
total calendar year 1991 imports in  
Category 335/635 from the United Arab  
Emirates.

The sharp and substantial increase in  
Category 335/635 imports from the  
United Arab Emirates is causing  
disruption in the U.S. market for cotton  
and man-made fiber women's and girls'  
coats.

**U.S. Production, Import Penetration, and  
Market Share**

U.S. production of cotton and man-  
made fiber women's and girls' coats,  
Category 335/635, at 4,346,000 dozen in  
1991, was slightly below the 1989  
production level. In contrast, U.S.  
imports of cotton and man-made fiber



women's and girls' coats, Category 335/635, at 7,912,000 dozen in 1991, were 33 percent above the 1989 import level. Imports continued to increase in 1992, up 20 percent above the January-July 1991 level. Imports reached 8,691,000 dozen in the year ending July 1992, 15 percent above the year ending July 1991 level and the highest 12 month level on record. The ratio of imports to domestic production rose from 136 percent in 1989 to 182 percent in 1991. The domestic manufacturers' share of the U.S. market fell from 42 percent in 1989 to 36 percent in 1991, a decline of 6 percentage points.

*Duty-Paid Value and U.S. Producers' Price*

Approximately 76 percent of Category 335/635 imports from the United Arab Emirates during the year ending July 1992 entered the U.S. under HTSUSA numbers 6102.30.2010—women's knit man-made fiber overcoats, carcoats, anoraks, or similar articles, 6202.93.5010—women's woven man-made fiber anoraks, windbreakers or similar articles, 6211.43.0050—other women's and girls' woven man-made fiber track suits other than trousers. These women's and girls' coats entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable women's and girls' coats.

**Market Statement—United Arab Emirates Category 369-S—Cotton Shop Towels October 1992**

*Import Situation and Conclusion*

U.S. imports of cotton shop towels, Category 369-S, from the United Arab Emirates reached 131,323 kilograms (4,303,000 units) in the year ending July 1992, nearly five times the 28,017 kilograms (877,500 units) imported a year earlier. During the first seven months of 1992, Category 369-S imports from the United Arab Emirates reached 120,437 kilograms (3,903,000 units), over four times the January-July 1991 level, and more than 3 times the total calendar year 1991 imports in Category 369-S from the United Arab Emirates.

The sharp and substantial increase of Category 369-S imports from the United Arab Emirates is causing disruption in the U.S. market for cotton shop towels. *U.S. Production, Import Penetration, and Market Share*

U.S. production of cotton shop towels declined in 1990 and in 1991, falling to 135,700,000 units 1991, four percent below the 1990 level and eight percent below the 1989 level. U.S. imports of cotton shop towels, Category 369-S, increased in 1990 then declined in 1991 to 141,407,000 units, but remained 11 percent above the 1989 level. Imports surged in 1992, increasing 32 percent in the first seven months of 1992 over the January-July 1991 level, reaching

167,594,000 units in the year ending July 1992, 15 percent above the year ending July 1991 level and five percent above the calendar year 1990 record level.

The ratio of imports to domestic production increased from 86 percent in 1989 to 104 percent in 1991. The U.S. producers' share of the U.S. cotton shop towel market dropped 5 percentage points, falling from 54 percent in 1989 to 49 percent in 1991.

*Duty-Paid Value and U.S. Producers' Price*

Category 369-S imports from the United Arab Emirates during the year ending July 1992 entered the U.S. under HTSUSA number 6307.10.2005—cotton shop towels. These shop towels entered the U.S. at landed duty-paid values below the U.S. producers' prices for comparable cotton shop towels.

[FR Doc. 92-26759 Filed 11-13-92; 8:45 am]

BILLING CODE 3510-DR-F

**COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED**

**Procurement List; Proposed Additions**

**AGENCY:** Committee for Purchase from People Who Are Blind or Severely Disabled.

**ACTION:** Proposed additions to procurement list.

**SUMMARY:** The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** December 16, 1992.

**ADDRESS:** Committee for Purchase from People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 557-1145.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The

major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following services to the Procurement List for provision by the nonprofit agency indicated:

Grounds Maintenance, U.S. Army Reserve Center, 6401 Imperial Drive, Waco, Texas  
Nonprofit Agency: Heart of Texas Goodwill Industries, Waco, Texas  
Janitorial/Custodial, Veterans Outreach Center, 500 Walnut Street, McKeesport, Pennsylvania  
Nonprofit Agency: Vocational Rehabilitation Center of Allegheny County, Pittsburgh, Pennsylvania  
Janitorial/Custodial, Veterans Outreach Center, 954 Penn Avenue, Pittsburgh, Pennsylvania  
Nonprofit Agency: Vocational Rehabilitation Center of Allegheny County, Pittsburgh, Pennsylvania  
Janitorial/Custodial, U.S. Army Reserve Center, 6401 Imperial Drive, Waco, Texas  
Nonprofit Agency: Heart of Texas Goodwill Industries, Waco, Texas  
Janitorial/Custodial, Army National Guard Center, South George Mason Center, Arlington, Virginia  
Nonprofit Agency: Didlake, Inc., Manassas, Virginia  
Mailroom Operation, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC  
Nonprofit Agency: Fairfax Opportunities Unlimited, Inc., Springfield, Virginia.

Beverly L. Milkman,  
Executive Director.

[FR Doc. 92-27691 Filed 11-13-92; 8:45 am]

BILLING CODE 6820-33-M



**Procurement List 1992 Additions and Deletions**

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Additions to and deletions from procurement list.

**SUMMARY:** This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

**EFFECTIVE DATE:** December 16, 1992.

**ADDRESS:** Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 557-1145.

**SUPPLEMENTARY INFORMATION:** On June 19, July 6, 31, September 18 and 25, 1992, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (55 FR 27440, 29713, 33943, 43224 and 44364) of proposed additions to and deletions from Procurement List:

**Additions**

After consideration of the material presented to it concerning capability of qualified workshops to provide the commodities and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in

connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to Procurement List:

**Commodities**

Bag, Polyethylene

8105-LL-S05-0146

8105-LL-S05-0147

8105-LL-S05-0148

(Requirements for the Naval Supply Center, Puget Sound, Bremerton, Washington)

Box, M16 Rifle

8140-00-X40-4785

Line, Tent

8340-00-252-2270

Flag, Signal

8345-00-935-3203

Hood, Sleeping Bag

8465-00-518-2769

**Services**

Audiocassette Reproduction, Fort Ord, California

Food Service Attendant, Air National Guard Base, Building 600, Lincoln, Nebraska

Janitorial/Custodial, Marine Corps Reserve Training Center, 3506 South Memorial Parkway, Huntsville, Alabama

Janitorial/Custodial, Defense Logistics Agency, DNSZ Curtis Bay Depot, Baltimore, Maryland

Janitorial/Custodial, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota

Janitorial/Custodial, Federal Office Building, 909 First Avenue, Seattle, Washington

**Deletions**

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

Accordingly, the following commodities are hereby deleted from the Procurement List:

Mat, Floor

7220-00-224-6487

Shirt, Woman's

8410-01-105-2531

8410-01-224-6079

8410-01-224-6080

8410-01-105-2532

8410-01-105-2533

8410-01-105-2534

8410-01-105-2500

8410-01-224-6081

8410-01-224-6082

8410-01-224-6083

8410-01-224-6084

8410-01-224-6085

8410-01-224-6086

8410-01-224-6087

8410-01-224-6088

8410-01-224-6075

8410-01-224-6076

8410-01-224-6089

8410-01-224-6090

8410-01-224-6091

8410-01-105-2501

8410-01-104-7947

8410-01-224-6092

8410-01-224-6093

8410-01-224-6094

8410-01-104-7949

8410-01-224-6095

8410-01-224-6096

8410-01-105-2495

8410-01-104-7950

8410-01-224-6097

8410-01-224-6098

8410-01-224-6099

8410-01-105-2502

8410-01-105-2503

8410-01-224-6100

8410-01-224-6101

8410-01-224-6102

8410-01-105-2504

8410-01-105-2505

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8410-01-104-7960

8410-01-104-7961

8410-01-224-6128

8410-01-104-7962

8410-01-224-6129

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8410-01-105-2515

Beverly L. Milkman,  
Executive Director.

[FR Doc. 92-27690 Filed 11-13-92; 8:45 am]

BILLING CODE 6820-33-M

## DEPARTMENT OF EDUCATION

### Direct Grant Programs and Fellowship Programs

**AGENCY:** Department of Education.

**ACTION:** Correction.

**SUMMARY:** In the notice inviting applications for new awards for fiscal year 1993, beginning on page 43498 in the issue of Monday, September 21, 1992, make the following corrections:

On page 43501, in the chart for Office of Elementary and Secondary

Education, the listings for CFDA Nos. 84.061C, Planning, Pilot, and Demonstration Projects for Indian Children (Planning Projects), and 84.061F, Indian Education—Educational Personnel Development, should be deleted. Competitions for new awards under these programs for FY 1993 have been withdrawn. In both cases revised funding estimates preclude an expenditure of funds for new awards for FY 1993.

In the same chart, in the listing for CFDA No. 84.165A, Magnet Schools Assistance Program, in the third column the estimated date for the application notice should read "12/4/92 (est)", and in the fourth column the estimated application deadline date should read "2/12/93 (est)".

On page 43502, in the continuation of the chart for Office of Elementary and Secondary Education, the listing for CFDA No. 84.214A, Migrant Education Even Start Program, and the second listings for CFDA Nos. 84.233A, Drug-Free Schools and Communities Emergency Grants Program, and 84.241A, Drug-Free Schools and Communities Counselor Training Grants Program, should be deleted because they repeat listings for those same programs beginning on page 43501 and continuing on page 43502.

On the same page, in the chart for Office of Postsecondary Education, in the listing for CFDA No. 84.042A, Student Support Services, in the fourth column the application deadline date should read "11/10/92".

In the same chart, in the listing for CFDA No. 84.120, Minority Science Improvement Program—Institutional, Design, Special, and Cooperative Projects, in the fourth column the application deadline date should read "12/28/92".

On the same page, in the chart for Office of Special Education and Rehabilitative Services—Office of Special Education Programs, in the listing for CFDA No. 84.023B, Student-Initiated Research Projects, in the fourth column the application deadline date should read "11/13/92"; in the listing for CFDA No. 84.023C, Field-Initiated Research Projects, in the fourth column the application deadline date should read "11/13/92"; in the listing for 84.024B, Early Childhood Model Demonstrations, in the fourth column the application deadline date should read "11/13/92"; and in the listing for 84.024J, State Data Systems, in the third column the citation for publication of the application notice should read "(57 FR 42988)". In the same chart, in the listing for CFDA No. 84.024P, in the second column the name of the program

should read "Model Early Intervention and Preschool Training Projects".

In the continuation of the same chart on page 43503, in the listing for CFDA No. 180E, Demonstrating and Evaluating the Benefits of Educational Innovations Using Technology, in the third column the citation for publication of the application notice should read "(57 FR 42989)"; in the listing for CFDA No. 180G, Technology, Educational Media and Materials Research Programs that Promote Literacy, in the third column the citation for publication of the application notice should read "(57 FR 42988)"; and in the listing for CFDA No. 237D, Development and Support for Enhancing Professional Knowledge, Skills, and Strategies, in the third column the citation for publication of the application notice should read "(57 FR 42987)".

On page 43511, in Chart 4.—Office of Elementary and Secondary Education, the listings for CFDA No. 84.061C, Planning, Pilot, and Demonstration Projects for Indian Children (Planning Projects), and CFDA No. 84.061F, Indian Education—Educational Personnel Development, should be deleted for reasons stated elsewhere in this notice.

On page 43512 the application notice for CFDA No. 84.061C, Planning, Pilot, and Demonstration Projects for Indian Children (Planning Projects), should be deleted. On the same page and on page 43513, the application notice for CFDA No. 84.061F, Indian Education—Educational Personnel Development, should be deleted.

On page 43517, in Chart 5.—Office of Postsecondary Education, in the listing for CFDA No. 84.120, Minority Science Improvement Program—Institutional, Design, Special, and Cooperative Projects, in the second column the date for availability of applications should read "11/13/92", in the third column the application deadline date should read "12/28/92", and in the fourth column the deadline for intergovernmental review should read "3/1/93".

On page 43521, in Chart 6.—Office of Special Education and Rehabilitative Services—National Institute on Disability and Rehabilitation Research, in the listing for CFDA No. 84.133A-3, Research and Demonstration Projects, in the second column the date of application availability should read "10/30/92".

On page 43522, in the continuation of Chart 6.—Office of Special Education and Rehabilitative Services—Rehabilitation Services Administration, in the listing for CFDA No. 84.129T, Rehabilitation Training—Experimental and Innovative Training, in the third



column the application deadline date should read "11/23/92". On the same page, in the application notice for CFDA No. 84.133A, Research and Demonstration Projects, in the third column, paragraph one, the telephone number for TDD services should read "(202) 205-9136".

On page 43523, in the continuation of the application notice for CFDA No. 84.224A, State Grants for Technology-Related Assistance for Individuals with Disabilities, in the first column, paragraph one, the telephone number for TDD services should read "(202) 205-9136". On that same page in the application notice for CFDA No. 84.128G, Vocational Rehabilitation Service Projects for Migratory Agricultural and Seasonal Farmworkers with Handicaps, the second paragraph, Eligible Applicants, is corrected to include "nonprofit agencies working in collaboration with State vocational rehabilitation agencies". This correction results from the Rehabilitation Act Amendments of 1992.

With regard to CFDA No. 84.129V, Rehabilitation Training—State Vocational Rehabilitation Unit In-Service Training (the listing for which appears in the continuation of Chart 6 on page 43522 and the application notice for which appears on page 43524, in the first column), readers are advised that the Department plans to publish in the *Federal Register* a separate notice incorporating changes resulting from the Rehabilitation Act Amendments of 1992.

Dated: November 6, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92-27636 Filed 11-13-92; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Financial Assistance Award: Washington State University

**AGENCY:** U.S. Department of Energy (DOE), Richland Field Office.

**ACTION:** Notice of intent to make a noncompetitive financial assistance award.

**SUMMARY:** The DOE Richland Field Office, in accordance with 10 CFR 600.7(b)(2) gives notice of its plan to award a grant to Washington State University, which operates a branch university campus at Richland, Washington.

**SCOPE:** The award will provide support of \$40,000 to cover part of the cost of a graduate-level program of course work leading to a graduate degree in

engineering management. This program is needed by Hanford employees and its existence currently depends on funding from outside sources, including third parties.

The DOE has determined that the award on a noncompetitive basis is appropriate for the following reasons:

The activity to be supported is already being conducted by the applicant using its own resources and those of third parties and is a follow-on to an advanced degree program which DOE has previously supported. It is conducted at the Washington State University Tri-Cities Branch campus, which, by action of the state legislature, is charged with delivery of graduate education programs in the Tri-Cities. Through Washington State University, the State of Washington provides the facilities for the program. DOE support will enhance the public benefit to be derived from the availability of graduate education which will continue to attract and retain qualified employees at the Hanford Site. It is anticipated that the University will fully fund the program in the future. In addition, Washington State University is the only educational institution through which advanced degrees in the sciences and engineering are available within commuting distance of Hanford.

**FOR FURTHER INFORMATION CONTACT:** Marji W. Parker, U.S. Department of Energy, Richland Field Office, Procurement Division, P.O. Box 550, Richland, WA 99352, Telephone: (509) 376-2029.

Dated: November 5, 1992.

Robert D. Larson,

Director, Procurement Division, Richland Operations Office.

[FR Doc. 92-27697 Filed 11-13-92; 8:45 am]

BILLING CODE 6450-01-M

### Federal Energy Regulatory Commission

[Docket Nos. RP92-104-000 and RP92-131-000]

### K N Energy, Inc.; Informal Settlement Conference

November 9, 1992.

Take notice that an informal settlement conference will be convened in this proceeding on Thursday, December 3, 1992, at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC., 20426, for the purpose of exploring the possible settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined

by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Marc C. Denkinger (202) 208-2215 or Lorna Hadlock (202) 208-0737.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-27676 Filed 11-13-92; 8:45 am]

BILLING CODE 6717-01-M

## Office of Fossil Energy

[FE Docket No. 92-114-NG]

### Libra Marketing Co.; Order Granting Blanket Authorization To Export Natural Gas to Mexico

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of an order.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Libra Marketing Company blanket authorization to export up to 36.5 Bcf of natural gas to Mexico over a two-year term beginning on the date of the first export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., November 6, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-27698 Filed 11-13-92; 8:45 am]

BILLING CODE 6450-01-M

## Office of Hearings and Appeals

### Cases Filed, During the Week of October 9 Through October 16, 1992

During the Week of October 9 through October 16, 1992, the appeals and applications for other relief listed in the appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments



on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of

publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office

of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: November 9, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

#### LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of October 9 through October 16, 1992]

Date	Name and location of applicant	Case No.	Type of submission
Sept. 24, 1992	Gulf/McClure's Gulf, Atlantic Beach, FL	RR300-208	Request for modification/rescission in the Gulf refund proceeding. If granted: The July 1, 1992 Dismissal Letter (Case No. RF300-14769) issued to McClure's Gulf regarding the firm's Application for Refund submitted in the Gulf Refund Proceeding would be modified.
Oct. 5, 1992	Gulf/Grubbs Gulf, Otar, SC	RR300-209	Request for modification/rescission in the Gulf refund proceeding. If granted: The January 3, 1992 Dismissal Letter (Case No. RF300-12836) issued to Grubbs Gulf regarding the firm's Application for Refund submitted in the Gulf Refund Proceeding would be modified.
Oct. 13, 1992	Westate, Rockville, MD	LFA-0243	Appeal of an information request denial. If granted: Westat would receive access to the winning proposal (including the entire technical proposal) for the Survey Design and Analysis Support Services Contract for the Energy Information Administration.
Oct. 14, 1992	Marylita Kelley, Livermore, CA	LFA-0244	Appeal of an information request denial. If granted: The September 4, 1992 Freedom of Information Request Denial issued by the Office of Administrative Services would be rescinded, and Marylita Kelley would receive a copy of a plan, submitted to DOE by the three major nuclear weapons laboratories, which "carves up the nuclear weapons area, technologies needed to build nuclear bombs."
Oct. 15, 1992	Arco/G&G Oil Co. of Indiana, Washington, DC	RR304-48	Request for modification/rescission in the ARCO refund. If granted: The May 4, 1989 Decision and Order (Case No. RF304-2578) issued to G & G Oil Co. of Indiana, Inc. regarding the firm's Application for Refund submitted in the ARCO Refund Proceeding would be modified.

#### REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund applicant	Case number
10/10/92 thru 10/16/92	Gulf Oil refund, applications received	RF300-20607 thru RF300-20619
10/10/92 thru 10/16/92	Atlantic Richfield, applications received	RF304-13325 thru RF304-13337
10/10/92 thru 10/16/92	Crude Oil refund, applications received	RF272-93897 thru RF272-93908
10/13/92	Oakley & Oldfield, Inc.	RF342-311
10/13/92	Airkaman, Inc.	RF321-19318
10/15/92	Weeks Texaco #2	RF321-19319

[FR Doc. 92-27695 Filed 11-13-92; 8:45 am]  
BILLING CODE 6450-01-M

#### Office of Hearing and Appeals

#### Notice of Cases Filed During the Week of October 23 through October 30, 1992

During the Week of October 23 through October 30, 1992, the appeals

and applications for exception or other relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of

the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: November 9, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

#### LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of October 23 through October 30, 1992]

Date	Name and location of applicant	Case No.	Type of submission
Oct. 26, 1992	Suburban Fuel Company, Alexandria, VA	Lee-0045	Exception to the reporting requirements. If granted: Suburban Fuel Company would not be required to file Form EIA-782B, the Petroleum Production Sales Report.



## LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of October 23 through October 30, 1992]

Date	Name and location of applicant	Case No.	Type of submission
Oct. 26, 1992	ARCO/Ed & Marty's Fuel Oil, Washington, DC	RR304-50	Request for modification/rescission in the Arco refund proceedings. If granted: The September 29, 191992 Decision and Order (Case No. RF304-13258) issued to Ed & Marty's Fuel Oil would be modified regarding the firm's application for refund submitted in the Arco refund proceeding.
Oct. 28, 1992	Texaco/London's Farm Dairy, Inc., Washington, DC	RR321-118	Request for modification/rescission in the Texaco refund proceeding. If granted: The July 22, 1991 Decision and Order (Case No. RF321-9354) issued to London's Farm Dairy, Inc. would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
Oct. 28, 1992	Aminoil/Behm Family Corporation, Washington, DC	RR139-74	Request for modification/rescission in the Aminoil refund proceeding. If granted: The May 2, 1988 Decision and Order (Case Nos. RF139-174 and RR139-10) issued to the Behm Family Corporation would be modified regarding the firm's application for refund submitted in the Aminoil refund proceeding.

## REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund application	Case No.
10/23/92 thru 10/30/92	Texaco Oil refund, applications received	RF321-19346 thru RF321-19367
10/23/92 thru 10/30/92	Gulf Oil refund, applications received	RF300-20636 thru RF300-20653
10/23/92 thru 10/30/92	Crude Oil refund, applications received	RF272-93927 thru RF272-93940
10/23/92	Stanley J. Clark, Inc.	RF315-10274
10/23/92	Foster & Kleiser Div.	RF300-20636
10/26/92	Interstate Texaco	RF321-19346
10/26/92	Lee Paradise Texaco	RF321-19347
10/26/92	Lee's Texaco Station	RF321-19348
10/26/92	Grand Valley Com Sch Dist	RC272-163
10/26/92	So. Bay Plaza Car Wash	RF304-13347
10/26/92	Preferred Fuel Oils	RF304-13348
10/26/92	Fernandes Arco	RF304-13349
10/26/92	Pifko's Arco Service Station	RF304-13350
10/26/92	International Detective Serv.	RF304-13351
10/26/92	Paul Lindsay Arco No. 1	RF304-13352
10/26/92	Paul Lindsay Arco No. 2	RF304-13353
10/26/92	Open Party Food Marts	RF304-13354
10/26/92	Open Party Food Marts	RF304-13355

[FR Doc. 92-27696 Filed 11-13-92; 8:45 am]  
BILLING CODE 6450-01-M

## FEDERAL COMMUNICATIONS COMMISSION

## Public Information Collection Requirement Submitted to Office of Management and Budget for Review

November 6, 1992.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street, NW, suite 640, Washington, DC 20036, (202) 452-1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of

Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0449.

Title: Section 1.65(c), Substantial and significant changes in information furnished by applicants to the Commission [Policy Regarding Character Qualifications of Broadcast Licensees, MO&O, FCC 92-448].

Action: Revision of a currently approved collection.

Respondents: Individuals or households, non-profit institutions, and Businesses or other for-profit (including small businesses).

Frequency of Response: Annual reporting requirement.

Estimated Annual Burden: 30 responses; 1.5 hours average burden per responses; 45 hours total annual burden.

Needs and Uses: The Commission recently modified its requirements regarding the reporting of non-FCC misconduct which may have a bearing on the character qualifications of broadcast licensees, permittees and

applicants. The Commission took this action in response to eight petitions for further reconsideration or clarification of the *Policy Statement and Order*. In light of the substantial evidence presented by petitioners regarding the burdens associated with the litigation reporting requirements for broadcasters, and in order to minimize these burdens, the Commission: (a) Modified § 1.65(c) of its rules to require broadcasters to report relevant non-FCC adjudications on an annual basis rather than within 90 days of becoming knowledgeable of such adjudications; (b) eliminated the requirement that broadcast applicants report pending litigation; (c) narrowed the litigation reporting requirements as they apply to licensee principal who have attributable interests in other entities; and (d) narrowed the litigation reporting requirements regarding parent corporations and related subsidiaries. A number of FCC forms will have to be modified in the future. If the information were not submitted to the



Commission, a licensee or permittee that had engaged in serious misconduct would remain a permittee or licensee for the duration of its term without Commission scrutiny of the adjudicated in misconduct and the affect of that misconduct on the licensee's or permittees character qualifications to remain a Commission licensee or permittee.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-27604 Filed 11-13-92; 8:45 am]

BILLING CODE 6712-01-M

### Public Information Collection Requirements Submitted to Office of Management and Budget for Review

November 6, 1992.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452-1422. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0216.

Title: Section 73.3538, Application to make changes in an existing station.

Action: Extension of a currently approved collection.

Respondents: Non-profit institutions, and businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 97 responses; 4.25 hours average burden per response; 412 hours total annual burden.

Needs and Uses: Section 73.3538(b) requires a broadcast station to file an informal application to make the following changes in a station authorization; (1) to specify new AM station directional antenna field monitoring point; and (2) to modify or discontinue the obstruction marking or lighting of an antenna supporting structure. The data are used by FCC staff to: (1) Establish a monitoring point that will be used to guarantee

the proper performance of a directional antenna in FCC monitoring activities and to ensure that no interference is caused to other stations; and (2) to ensure that the modification or discontinuance of the obstruction marking or lighting will not cause a menace to air navigation. The data is then extracted for inclusion in a modified license to operate the station.

OMB Number: 3060-0433.

Title: Basic Signal Leakage Performance Report.

Form Number: FCC Form 320.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: Annual reporting requirement.

Estimated Annual Burden: 32,000 responses; 20 hours average burden per response; 640,000 hours total annual burden.

Needs and Uses: Cable television system operators who use frequencies in the bands 108-137 and 225-400 MHz (aeronautical frequencies) are required to file a cumulative signal leakage index (CLI) derived under § 76.611(a)(1) or the results of airspace measurements derived under § 76.611(a)(2). This filing must include a description of the method by which compliance with basic signal leakage criteria is achieved and the method of calibrating the measurement equipment. This annual filing is done in accordance with § 76.615 on FCC Form 320. The data is used by FCC staff to ensure the safe operation of aeronautical and marine radio services, and to monitor for compliance of cable aeronautical usage which will minimize future interference to these safety of life services.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-27603 Filed 11-13-92; 8:45 am]

BILLING CODE 6712-01-M

### [CC Docket No. 90-571]

### Telecommunications Relay Services

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the states listed below have applied to the Commission for State Telecommunications Relay (TRS) Certification for a period of five years, subject to renewal, as prescribed by the

Commission's Report and Order and Request for Comments (R&O) in the matter of Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990 (CC Docket No. 90-571, FCC 91-213, adopted July 11, 1991, and released July 26, 1991; 6 FCC Rcd 4657 (1991) (56 FR 36729, August 1, 1991).

### FOR FURTHER INFORMATION CONTACT:

Linda B. Dubroof, (202) 634-1800.

SUPPLEMENTARY INFORMATION: Pursuant to the R&O, parts 0 and 64 of the Commission's rules have been amended to implement the provisions of title IV of the Americans with Disabilities Act of 1990 (ADA). The R&O provides that the Commission shall give public notice of each state's TRS certification filing, including notification in the **Federal Register**, in order to inform the public of the states seeking certification.

PUBLIC NOTICES: During the period October 7, 1992, through November 4, 1992, the Domestic Facilities Division, Common Carrier Bureau, announced by public notice those states who have applied for TRS certification. Copies of those applications for certification are available for public inspection at the Commission's Common Carrier Bureau, Domestic Facilities Division, room 6220, 2025 M Street, NW., Washington, DC, Monday through Thursday, 8:30 a.m. to 3 p.m. (closed 12:30 p.m. to 1:30 p.m.). Interested persons may file comments with respect to those applications within 30 days of the date of the public notice in which the application appears. Information pertinent to each state's application, as contained in the public notices, is as follows:

### Public Notice dated October 7, 1992:

File No.: TRS-01-92

Applicant: Alabama Public Service Commission

State of: Alabama

File No.: TRS-02-92

Applicant: Georgia Public Service Commission

State of: Georgia

File No.: TRS-03-92

Applicant: Kentucky Public Service Commission

State of: Kentucky

File No.: TRS-04-92

Applicant: Kansas Relay Service, Inc.

State of: Kansas

File No.: TRS-05-92

Applicant: Michigan Public Service Commission

State of: Michigan

File No.: TRS-06-92

Applicant: Tennessee Public Service Commission

State of: Tennessee

File No.: TRS-07-92



Applicant: Department of Human Resources, Commission on the Deaf and Hearing Impaired  
 State of: Connecticut  
 File No.: TRS-08-92  
 Applicant: Colorado Public Utilities Commission  
 State of: Colorado  
 File No.: TRS-09-92  
 Applicant: Arizona Council for the Hearing Impaired  
 State of: Arizona  
 File No.: TRS-10-92  
 Applicant: California Public Utilities Commission  
 State of: California  
 File No.: TRS-11-92  
 Applicant: State of Wisconsin, Department of Administration  
 State of: Wisconsin  
 File No.: TRS-12-92  
 Applicant: Public Utilities Commission of Ohio  
 State of: Ohio  
 File No.: TRS-13-92  
 Applicant: Office of Management and Budget, Information Services Division  
 State of: North Dakota  
 File No.: TRS-14-92  
 Applicant: Oregon Public Utility Commission  
 State of: Oregon  
 File No.: TRS-15-92  
 Applicant: Oklahoma Corporation Commission, Public Utility Division  
 State of: Oklahoma  
 File No.: TRS-16-92  
 Applicant: Indiana Telephone Relay Access Corporation for the Hearing Impaired  
 State of: Indiana  
 File No.: TRS-17-92  
 Applicant: Virginia Department for the Deaf and Hard of Hearing  
 State of: Virginia  
 File No.: TRS-18-92  
 Applicant: Wyoming Division of Vocational Rehabilitation  
 State of: Wyoming  
 File No.: TRS-19-92  
 Applicant: Department of Human Resources, Division of Services for the Deaf and the Hard of Hearing  
 State of: North Carolina  
 File No.: TRS-20-92  
 Applicant: Idaho Public Utilities Commission  
 State of: Idaho  
 File No.: TRS-21-92  
 Applicant: Nebraska Public Service Commission  
 State of: Nebraska  
 File No.: TRS-22-92  
 Applicant: Illinois Commerce Commission  
 State of: Illinois  
 File No.: TRS-23-92  
 Applicant: West Virginia Public Service Commission  
 State of: West Virginia  
 File No.: TRS-24-92  
 Applicant: South Carolina Public Service Commission  
 State of: South Carolina

**Public Notice dated October 14, 1992:**

File No.: TRS-25-92

Applicant: Department of General Services  
 State of: Maryland  
 File No.: TRS-26-92  
 Applicant: Arkansas Public Service Commission  
 State of: Arkansas  
 File No.: TRS-27-92  
 Applicant: Alaska Public Utilities Commission  
 State of: Alaska  
 File No.: TRS-28-92  
 Applicant: Telecommunications Access for Communication-Impaired Persons Board  
 State of: Minnesota  
 File No.: TRS-29-92  
 Applicant: Public Service Commission  
 District of Columbia  
 File No.: TRS-30-92  
 Applicant: Puerto Rico Telecommunications Regulatory Commission  
 Puerto Rico  
 File No.: TRS-31-92  
 Applicant: New Hampshire Public Utilities Commission  
 State of: New Hampshire  
 File No.: TRS-32-92  
 Applicant: Mississippi Public Service Commission  
 State of: Mississippi  
 File No.: TRS-33-92  
 Applicant: Public Utility Commission of Texas  
 State of: Texas  
 File No.: TRS-34-92  
 Applicant: Public Service Commission of Delaware  
 State of: Delaware  
 File No.: TRS-35-92  
 Applicant: State of New York, Department of Public Service  
 State of: New York  
 File No.: TRS-36-92  
 Applicant: Missouri Public Service Commission  
 State of: Missouri  
 File No.: TRS-38-92  
 Applicant: Governor's Committee of Telecommunication Services for the Telephone Handicapped  
 State of: Montana  
 File No.: TRS-38-92  
 Applicant: State of New Jersey Board of Regulatory Commissioners  
 State of: New Jersey  
 File No.: TRS-39-92  
 Applicant: Iowa Utilities Board  
 State of: Iowa  
 File No.: TRS-40-92  
 Applicant: Pennsylvania Public Utility Commission  
 State of: Pennsylvania  
 File No.: TRS-41-92  
 Applicant: Department of Human Services  
 State of: South Dakota  
 File No.: TRS-42-92  
 Applicant: Public Utilities Commission  
 State of: Maine  
 File No.: TRS-43-92  
 Applicant: Department of Public Service  
 State of: Vermont  
 File No.: TRS-44-92  
 Applicant: Louisiana Public Service Commission  
 State of: Louisiana  
 File No.: TRS-45-92

Applicant: Public Utilities Commission  
 State of: Hawaii

**Public Notice dated October 21, 1992:**

File No.: TRS-46-92  
 Applicant: Florida Public Service Commission  
 State of: Florida  
 File No.: TRS-47-92  
 Applicant: Public Utilities Commission  
 State of: Rhode Island

**Public Notice dated October 28, 1992:**

File No.: TRS-48-92  
 Applicant: Department of Human Resources, Rehabilitation Division  
 State of: Nevada

**Public Notice dated November 4, 1992:**

File No.: TRS-49-92  
 Applicant: Department of Public Utilities  
 State of: Massachusetts  
 Federal Communication Commission.

**Cheryl A. Tritt,**

*Chief, Common Carrier Bureau.*

[FR Doc. 92-27602 Filed 11-13-92; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Public Information Collection Requirements Submitted to OMB for Review

#### **ACTION:** Notice.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

**DATES:** Comments on this information collection must be submitted on or before January 15, 1993.

**ADDRESSES:** Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Information Collections Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503. (202) 395-7340, within 60 days of this notice.

**FOR FURTHER INFORMATION CONTACT:** Copies of the above information collection request and supporting documentation can be obtained by calling or writing Linda Borrer, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-2624.  
*Type:* New Collection.



**Title:** Electromagnetic Pulse  
Emergency Broadcast System Radio  
Station Inspection Report.

**Abstract:** The Federal Emergency Management Agency manages an Electromagnetic Environmental Effects (E<sup>3</sup>) Protection program which provides for the protection of communications facilities against electromagnetic pulse (EMP) resulting from high altitude nuclear detonation or from environmental disturbances such as lightning and power line transients. EMP inspection reports are used by FEMA to ensure that electrical and electronic devices and other materials installed at Emergency Broadcast System radio stations operate effectively to suppress transient electrical energy and prevent damage to critical electrical circuits and equipment. EBS radio stations are required to conduct annual inspections of electrical and electronic devices and materials on a regularly scheduled basis. FEMA's procedures for conducting EMP protection inspections have been integrated into EBS radio stations routine maintenance procedures. Completed inspection reports are submitted to FEMA Regional EMP Protection Managers.

**Type of Respondents:** Businesses and other for-profit.

**Estimate of Total Annual Reporting and Recordkeeping Burden:** 131 hours.

**Number of Respondents:** 175.

**Estimated Average Burden Time per Response:** 45 minutes.

**Frequency of Response:** Annually.

**Dated:** October 29, 1992.

**Wesley C. Moore,**

*Director, Office of Administrative Support.*  
[FR Doc. 92-27678 Filed 11-13-92; 8:45 am]

**BILLING CODE 6718-01-M**

#### Public Information Collection Requirements Submitted to OMB for Review

**ACTION:** Notice.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

**DATES:** Comments on this information collection must be submitted on or before January 15, 1993.

**ADDRESSES:** Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to:

the FEMA Information Collections Clearance Officer at the address below; and the Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395-7340, within 60 days of this notice.

**FOR FURTHER INFORMATION CONTACT:** Copies of the above information collection request and supporting documentation can be obtained by calling or writing Linda Borrer, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-2624.

**Type:** New Collection.

**Title:** Electromagnetic Pulse  
Inspection and Maintenance Plan.

**Abstract:** The Federal Emergency Management Agency manages an Electromagnetic Environmental Effects (E<sup>3</sup>) Protection program which provides for the protection of communications facilities against electromagnetic pulse (EMP) resulting from high altitude nuclear detonation or from environmental disturbances such as lightning and power line transients. All Emergency Broadcast System radio stations and Emergency Operating Centers must prepare an Electromagnetic Pulse Inspection and Maintenance Plan to specifically identify each mission-critical system with EMP protection in the facility, specific protection elements, and their locations; identify which group or individual at the facility is responsible for maintaining the specific system(s), performing required maintenance and inspection activities, controlling modifications to the equipment complex or alterations of the facility, and delineating documentation requirements including preparation, content and distribution of reports; maintain facility inspection and maintenance records; and plan for scheduled and unscheduled inspection and maintenance activities, including an annual inspection by the Facility EMP Protection Coordinator.

**Type of Respondents:** State and local governments, Businesses or other for-profit.

**Estimate of Total Annual Reporting and Recordkeeping**

**Burden:** 1,125 hours.

**Number of Respondents:** 375.

**Estimated Average Burden Time per Response:** 3 hours.

**Frequency of Response:** Annually.

**Dated:** October 29, 1992.

**Wesley C. Moore,**

*Director, Office of Administrative Support.*  
[FR Doc. 92-27679 Filed 11-13-92; 8:45 am]

**BILLING CODE 6718-01-M**

#### Public Information Collection Requirements Submitted to OMB for Review

**ACTION:** Notice.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

**DATES:** Comments on this information collection must be submitted on or before January 15, 1993.

**ADDRESSES:** Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Information Collections Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395-7340, within 60 days of this notice.

**FOR FURTHER INFORMATION CONTACT:** Copies of the above information collection request and supporting documentation can be obtained by calling or writing Linda Borrer, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-2624.

**Type:** New Collection.

**Title:** Electromagnetic Pulse  
Emergency Operating Centers  
Inspection Report.

**Abstract:** The Federal Emergency Management Agency manages an Electromagnetic Environmental Effects (E<sup>3</sup>) Protection program which provides for the protection of communications facilities against electromagnetic pulse (EMP) resulting from high altitude nuclear detonation or from environmental disturbances such as lightning and power line transients. EMP inspection reports are used by FEMA to ensure that electrical and electronic devices and other materials installed at Emergency Operating Centers (EOC's) operate effectively to suppress transient electrical energy and prevent damage to critical electrical circuits and equipment. EOC's are required to conduct annual inspections of electrical and electronic devices and materials on a regularly scheduled basis. FEMA's procedures for conducting EMP protection inspections have been integrated into EOC's routine maintenance procedures. Completed inspection reports are submitted to



**FEMA Regional EMP Protection Managers.**

*Type of Respondents:* State and local governments.

*Estimate of Total Annual Reporting and Recordkeeping*

*Burden:* 150 hours.

*Number of Respondents:* 200.

*Estimated Average Burden Time per Response:* 45 minutes.

*Frequency of Response:* Annually.

*Dated:* October 29, 1992.

**Wesley C. Moore,**

*Director, Office of Administrative Support.*

[FR Doc. 92-27680 Filed 11-13-92; 8:45 am]

BILLING CODE 6718-01-M

### **Public Information Collection Requirements Submitted to OMB for Review**

**ACTION:** Notice.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

**DATES:** Comments on this information collection must be submitted on or before January 15, 1993.

**ADDRESSES:** Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Information Collections Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395-7340, within 60 days of this notice.

**FOR FURTHER INFORMATION CONTACT:**

Copies of the above information collection request and supporting documentation can be obtained by calling or writing Linda Borrer, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2624.

*Type:* New Collection.

*Title:* Periodic Electromagnetic Pulse Protection Inspection Checklist.

*Abstract:* The Federal Emergency Management Agency manages an Electromagnetic Environmental Effects (E<sup>3</sup>) Protection program which provides for the protection of communications facilities against electromagnetic pulse (EMP) resulting from high altitude nuclear detonation or from environmental disturbances such as lightning and power line transients.

Inspections of electrical and electronic devices and other material are performed at periodic intervals as established in the facility's EMP Inspection and Maintenance Plan. Formal inspections are mandatory and are performed on an annual basis, informal inspections occur in conjunction with a significant event, such as recurring systems upsets, electrical storms, etc., and occasional inspections are performed periodically to locate degradation or other problems that occur between other types of inspections. The checklist is used to document and report on these inspection activities. If the checklist shows that EMP protection devices and materials are defective or inoperative and need to be removed, the Regional EMP Program Managers will use the information to replace those devices and materials.

*Type of Respondents:* State and local governments, Businesses or other for-profit.

*Estimate of Total Annual Reporting and Recordkeeping Burden:* 1,067.5 hours.

*Number of Respondents:* 375 for checklist annual inspection reporting; 25 for checklist facility modification reporting; and 80 for checklist maintenance reporting.

*Estimated Average Burden Time per Response:* 2.5 hours for checklist annual inspection reporting; 2 hours for checklist facility modification reporting; and 1 hour for checklist maintenance reporting.

*Frequency of Response:* Annually, On occasion.

*Dated:* October 29, 1992.

**Wesley C. Moore,**

*Director, Office of Administrative Support.*

[FR Doc. 92-27681 Filed 11-13-92; 8:45 am]

BILLING CODE 6718-01-M

### **FEDERAL HOUSING FINANCE BOARD**

[No. FHFB 92-739]

#### **Federal Home Loan Bank Members; Selected for Community Support Review**

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Notice.

**SUMMARY:** The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 added a new section 10(g) to the Federal Home Loan Bank Act of 1932 requiring that members of the Federal Home Loan Bank (FHLBank) System meet standards for community investment or service in order to maintain continued access to long-term

FHLBank System advances. In compliance with this statutory change, the Federal Housing Finance Board (Finance Board) promulgated Community Support regulations (12 CFR part 936) that were published in the **Federal Register** on November 21, 1991 (56 FR 58639). Under the review process established in the regulations, the Finance Board will select a certain number of members for review each quarter, so that all members will be reviewed once every two years. The purpose of this Notice is to announce the names of the members selected for the fourth quarter review under the regulations. The Notice also conveys the dates by which members need to comply with the Community Support regulation review requirements and by which comments from the public must be received.

**DATES:** Due Date for Member Community Support Statements for Members Selected in Fourth Quarter Review: December 31, 1992.

Due Date for Public Comments on Members Selected in Fourth Quarter Review: December 31, 1992.

**FOR FURTHER INFORMATION CONTACT:**

Sylvia C. Martinez, Director, Housing Finance Directorate, (202) 408-2825, or Kathleen S. Brueger, Associate Director, Housing Finance Directorate, (202) 408-2821, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

**SUPPLEMENTARY INFORMATION:**

#### **A. Selection for Community Support Review**

The Finance Board intends to review the entire FHLBank System membership once every two years. Approximately one-eighth of the FHLBank members in each district will be selected for review by the Finance Board each calendar quarter. Only members with post-July 1, 1990 CRA Evaluations and members not subject to CRA will be selected for review in the first two years following the effective date of the regulation. In selecting members, the Finance Board will follow the chronological sequence of the members' CRA Evaluations, to the greatest extent practicable, selecting one-eighth of each District's membership for review each calendar quarter.

Selection for review is not, nor should it be construed as, any indication of either the financial condition or Community Support performance of the institutions listed.



**B. List of FHLBank Members to be  
Reviewed in Fourth Quarter 1992,  
Grouped by FHLBank District**

Member	City	State
<b>Federal Home Loan Bank of Boston—District 1</b> Post Office Box 9106, Boston, Massachusetts 02205-9106		
Bristol FSB	Bristol	CT
Nutmeg FS&LA	Danbury	CT
The Union SB of Danbury	Danbury	CT
Danielson FS&LA	Danielson	CT
Greenwich FS&LA	Greenwich	CT
American National Bank	Hamden	CT
Advest Bank	Hartford	CT
The Bank of Hartford, Inc.	Hartford	CT
Jewett City Savings Bank	Jewett City	CT
MidConn Bank	Kensington	CT
Naugatuck Valley Savings & Loan	Naugatuck	CT
The People's Savings Bank	New Britain	CT
The New Haven Savings Bank	New Haven	CT
Newtown Savings Bank	Newtown	CT
Gateway Bank	Norwalk	CT
First County Bank	Stamford	CT
First FS&LA of Torrington	Torrington	CT
The Dime SB of Wallingford	Wallingford	CT
Boston Federal Savings Bank	Boston	MA
Security FSB	Brockton	MA
Bay State Federal Savings Bank	Brookline	MA
Cambridgeport Savings Bank	Cambridge	MA
Canton Cooperative Bank	Canton	MA
Family Federal Savings, FA	Fitchburg	MA
Fitchburg Savings Bank	Fitchburg	MA
The Family Mutual Savings Bank	Haverhill	MA
Butler Bank—A Cooperative Bank	Lowell	MA
Lowell Co-operative Bank	Lowell	MA
Natick Federal Savings Bank	Natick	MA
New Bedford Ins. for Savings	New Bedford	MA
Colonial Federal Savings Bank	Quincy	MA
Quincy Savings Bank	Quincy	MA
Heritage Cooperative Bank	Salem	MA
Salem Five Cents Savings Bank	Salem	MA
Shirley Co-operative Bank	Shirley	MA
Stoneham Savings Bank	Stoneham	MA
Bay State Savings Bank	Worcester	MA
Concord Savings Bank	Concord	NH
First Essex SB of New Hampshire	Windham	NH
Brattleboro S&LA	Brattleboro	VT
Springfield S&LA	Springfield	VT
<b>Federal Home Loan Bank of New York—District 2</b> One World Trade Center, 103rd Floor, New York, New York 10048		
West Essex Savings Bank, SLA	Caldwell	NJ
Cape Savings Bank, SLA	Cape May Courthouse	NJ
First Constitution Bank	Cranbury	NJ
Delanco Savings & Loan	Delanco	NJ
Columbia Savings Bank, SLA	Fair Lawn	NJ
Little Falls Savings Bank, SLA	Little Falls	NJ
First Home Savings Bank, SLA	Penns Grove	NJ
First S&LA Sea Isle City	Sea Isle City	NJ
Manasquan Savings Bank, SLA	Wall Township	NJ
Wawel Savings Bank, SLA	Wallington	NJ
Watchung Hills Bank for Savings	Warren	NJ
First DeWitt S&LA	West Caldwell	NJ
Crest Savings & Loan Association	Wildwood Crest	NJ
First Financial Savings Bank, SLA	Woodbridge	NJ
Bridgehampton National Bank	Bridgehampton	NY
Ponce de Leon FSB	Bronx	NY
Atlas Savings & Loan Association	Brooklyn	NY
Flatbush FS&LA	Brooklyn	NY
Reliance Federal Savings Bank	Garden City	NY
Tompkins Cty. Trust Co	Ithaca	NY
Bankers Federal Savings Bank	New York	NY
Fourth Federal Savings Bank	New York	NY
National Bank & Trust Co. of Norwich	Norwich	NY
Adirondack Bank, A FSB	Saranac Lake	NY
Walden FS&LA	Walden	NY
City & Suburban, FSB	Yonkers	NY
Western Federal Savings Bank	Mayaguez	PR
Ponce Federal Bank, FSB	Ponce	PR



Member	City	State
<b>Federal Home Loan Bank of Pittsburgh—District 3</b>		
625 West Ridge Pike, Suite B-107, Conshohocken, Pennsylvania 19428		
First FSB of Delaware.....	Wilmington .....	DE
Iron Workers Savings Bank, PaSa .....	Ashton .....	PA
Beaver Trust Company .....	Beaver .....	PA
Wilbur Savings & Loan Association .....	Bethlehem .....	PA
Madison Bank .....	Blue Bell .....	PA
American Eagle S&LA .....	Boothwyn .....	PA
National Bank of Boyertown .....	Boyertown .....	PA
Brentwood FS&LA .....	Brentwood .....	PA
First Financial SB, PaSa .....	Downington .....	PA
The Elverson National Bank .....	Elverson .....	PA
Community Bank and Trust Company .....	Forest City .....	PA
The Dime Bank .....	Honesdale .....	PA
First FS&LA of Indiana .....	Indiana .....	PA
Johnstown Savings Bank, FSB .....	Johnstown .....	PA
The Russell National Bank .....	Lewistown .....	PA
First Commercial Bank of Phil .....	Philadelphia .....	PA
Roxborough-Manayunk FS&LA .....	Philadelphia .....	PA
First South Savings Association .....	Pittsburgh .....	PA
Schuylkill S&LA .....	Schuylkill Haven .....	PA
Somerset Trust Company .....	Somerset .....	PA
People's NB of Central PA .....	State College .....	PA
Mechanics S&LA of Dauphin Cty .....	Steelton .....	PA
Commonwealth Federal Savings Bank .....	Valley Forge .....	PA
Commonwealth Bank .....	Williamsport .....	PA
Compass FS&LA .....	Wilmerding .....	PA
Sovereign Bank, FSB .....	Wyomissing .....	PA
Beckley FSB .....	Beckley .....	WV
One Valley Bank, NA .....	Charleston .....	WV
Hancock County Savings Bank, FSB .....	Chester .....	WV
The National Bank of West Virginia .....	Morgantown .....	WV

**Federal Home Loan Bank of Atlanta—District 4**  
Post Office Box 105565, Atlanta, Georgia 30348

Pointe Savings Bank .....	Boca Raton .....	FL
First FSB of NW Florida .....	Fort Walton Beach .....	FL
Interamerican Bank, FSB .....	Miami .....	FL
Palm Beach FSB .....	Palm Beach Gardens .....	FL
Madison S&LA .....	Palm Harbor .....	FL
First FSB of Perry .....	Perry .....	FL
Bayside FS&LA .....	Port Charlotte .....	FL
Huntington Federal Savings Bank .....	Sebring .....	FL
Seaboard Savings Bank, FSB .....	Stuart .....	FL
Bankers First Savings Bank, FSB .....	Augusta .....	GA
First FSB of Brunswick .....	Brunswick .....	GA
First FS&LA .....	Milledgeville .....	GA
Quitman FS&LA .....	Quitman .....	GA
Vidalia FS&LA .....	Vidalia .....	GA
Arundel Federal Savings Bank .....	Baltimore .....	MD
Atlantic Federal Savings Bank .....	Baltimore .....	MD
Bohemian American FS&LA .....	Baltimore .....	MD
Chesapeake FS&LA .....	Baltimore .....	MD
Fraternity FS&LA .....	Baltimore .....	MD
Golden Prague FS&LA .....	Baltimore .....	MD
Homewood Federal Savings Bank .....	Baltimore .....	MD
Hopkins Federal Savings Bank .....	Baltimore .....	MD
Liberty FS&LA .....	Baltimore .....	MD
Madison Square FSB .....	Baltimore .....	MD
Midstate FS&LA .....	Baltimore .....	MD
Slavie FS&LA .....	Baltimore .....	MD
Sequoia Federal Savings Bank .....	Bethesda .....	MD
Kent S&LA, FA .....	Chestertown .....	MD
Patapsco .....	Dundalk .....	MD
Columbian-Bank, FSB .....	Havre de Grace .....	MD
Jarrettsville FS&LA .....	Jarrettsville .....	MD
Suburban Federal Savings Bank .....	Landover Hills .....	MD
Heritage Savings Bank, FSB .....	Lutherville .....	MD
Wyman Park FS&LA .....	Lutherville .....	MD
Odenton FS&LA .....	Odenton .....	MD
Capital Savings Bank, FSB .....	Timonium .....	MD
Prince Georges FSB .....	Upper Marlboro .....	MD
The Washington Savings Bank, FSB .....	Waldorf .....	MD
Tri-County Federal Savings Bank .....	Waldorf .....	MD
Community FS&LA .....	Burlington .....	NC
Financial First FSB .....	Burlington .....	NC
Canton Savings Bank .....	Canton .....	NC
Cherryville FS&LA .....	Cherryville .....	NC
Citizens Savings, FSB .....	Concord .....	NC
First Federal Savings Bank .....	Dunn .....	NC
Edenton S&LA .....	Edenton .....	NC



Member	City	State
Mutual FS&LA	Elkin	NC
Home FS&LA	Fayetteville	NC
Granite Savings Bank	Granite Falls	NC
Hillsborough S&LA	Hillsborough	NC
Davidson Federal Savings Bank	Lexington	NC
First FS&LA	Lincolnton	NC
Richmond Federal Savings Bank	Rockingham	NC
Omnibank, FSB	Salisbury	NC
First FSB of Moore County	Southern Pines	NC
Home Federal Savings Bank	Statesville	NC
Home S&LA	Thomasville	NC
Tryon FS&LA	Tryon	NC
Home Savings and Loan Association	Washington	NC
Abbeville S&LA	Abbeville	SC
The SB of Beauford County, FSB	Beaufort	SC
First FS&LA	Cheraw	SC
Citizens Building and LA	Greer	SC
Mutual S&LA, FA	Hartsville	SC
Pee Dee Federal Savings Bank	Marion	SC
First FS&LA	Walterboro	SC
Caroline Savings Bank	Bowling Green	VA
Homestead Savings Bank, FSB	Chesapeake	VA
Mutual Savings Bank, FSB	Danville	VA
Essex Savings Bank, FSB	Emporia	VA
First FS&LA	Martinsville	VA
Southwest Virginia Savings Bank	Roanoke	VA

**Federal Home Loan Bank of Cincinnati—District 5**  
Post Office Box 598, Cincinnati, Ohio 45201

Ashland FS&LA	Ashland	KY
Home FS&LA of Ashland	Ashland	KY
Kentucky FS&LA	Covington	KY
First FS&LA of Lexington	Lexington	KY
Madisonville B&L Association	Lexington	KY
Lincoln Federal Savings Bank	Standford	KY
Peoples Savings Bank	Ashtabula	OH
Citizens FS&LA of Bellefontaine	Bellefontaine	OH
Citizens Savings Bank of Canton	Canton	OH
Mercer Savings Bank	Celina	OH
Cheviot Building and Loan Company	Cheviot	OH
Bramble FS&LA of Cincinnati	Cincinnati	OH
Cincinnati FS&LA	Cincinnati	OH
First Financial Savings Asso., FA	Cincinnati	OH
Glenway Loan & Deposit Co.	Cincinnati	OH
Highland Federal Savings Bank	Cincinnati	OH
Price Hill Eagle Loan & Bldg. Co.	Cincinnati	OH
Seven Hills Savings Association	Cincinnati	OH
Horizon Savings Bank	Cleveland	OH
Ohio Savings Bank	Cleveland	OH
The Cuyahoga Savings Association	Cleveland	OH
Women's Federal Savings Bank	Cleveland	OH
Home Loan and Savings Company	Coshocton	OH
Covington Building and Loan Assoc.	Covington	OH
Citizens Federal Bank, FSB	Dayton	OH
Deer Park FS&LA	Deer Park	OH
Citizens FS&LA of Delphos	Delphos	OH
The Northern S&L Company	Elyria	OH
The Genoa Savings and Loan Company	Genoa	OH
Indian Village FS&LA	Gnadenhutten	OH
Apollo S&L	Gulf Manor	OH
Citizens Loan & Bldg.	Lima	OH
Enterprise FS&LA	Lockland	OH
The Home Builders Association	Lynchburg	OH
Clermont Savings Bank	Melford	OH
Mutual FSB of Miamisburg	Miamisburg	OH
Century Federal Savings Bank	Parma	OH
The Raveena S&L Co.	Raveena	OH
Peoples Savings Association	Sheronville	OH
The Strasburg S&L Company	Strasburg	OH
The Versailles S&L Company	Versailles	OH
First FS&LA of Wooster	Wooster	OH
The Wayne Savings and Loan Company	Wooster	OH
Home Federal Savings Bank	Xenia	OH
The Home Savings and Loan Company	Youngstown	OH
Athens FS&LA	Athens	TN
First FS&LA of Chattanooga	Chattanooga	TN
Lawrenceburg FS&LA	Lawrenceburg	TN

**Federal Home Loan Bank of Indianapolis—District 6**  
P.O. Box 60, Indianapolis, IN 46205-0060

Worksmen FSB	Bloomington	IN
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Member	City	State
Mutual Bldg & LA	Franklin	IN
First FS&LA of Hammond	Hammond	IN
First Indiana Bank, FSB	Indianapolis	IN
Railroadmens FS&LA of Indianapolis	Indianapolis	IN
Kentland FS&LA	Kentland	IN
Perpetual Fed. S&LA	Lawrenceburg	IN
Mishawaka Fed. Savings	Mishawaka	IN
First FS&LA of Peru	Peru	IN
West End FSB	Richmond	IN
Indiana FS&LA	Valparaiso	IN
First FS&L of Lenawee County	Adrian	MI
Great Lakes Bancorp, a FSB	Ann Arbor	MI
Mutual Savings Bank, FSB	Bay City	MI
First Federal of MI	Detroit	MI
D&N Bank, FSB	Hancock	MI
Hastings S&L, FA	Hastings	MI
Community First Bank	Lansing	MI
Wolverine FS&LA	Midland	MI
Sturgis Federal Savings Bank	Sturgis	MI
First Savings Bank, a FSB	Three Rivers	MI
Standard Federal Savings Bank	Troy	MI

**Federal Home Loan Bank of Chicago—District 7**  
111 East Wacker Drive, suite 800, Chicago, Illinois 60601

Midwest Savings Bank	Bolingbrook	IL
Chesterfield FS&LA of Chicago	Chicago	IL
Cragin Federal Bank for Savings	Chicago	IL
First Cook Community Bank, FSB	Chicago	IL
Liberty FS&LA of Chicago	Chicago	IL
Peoples FS&LA	Chicago	IL
Second FS&LA	Chicago	IL
Security FS&LA of Chicago	Chicago	IL
Southwest FS&LA of Chicago	Chicago	IL
Standard Federal Bank for Savings	Chicago	IL
Central FS&LA	Cicero	IL
Family Federal Savings of Illinois	Cicero	IL
Mid America Federal Savings Bank	Clarendon Hills	IL
De Witt County FS&LA	Clinton	IL
First Federal Bank, FSB	Colchester	IL
Suburban FS&LA	Flossmoor	IL
Harvard FS&LA	Galesburg	IL
Westinghouse Federal Bank, a FSB	Galesburg	IL
A.J. Smith Federal Savings Bank	Midlothian	IL
Security S&LA	Monmouth	IL
King City Federal Savings Bank	Mt. Vernon	IL
Rantoul First FS&LA	Rantoul	IL
First Federal S&LA of Rockford	Rockford	IL
Amity Federal Bank for Savings	Tinley Park	IL
Baraboo Federal Bank, FSB	Baraboo	WI
Cumberland Federal Bank, FSB	Cumberland	WI
East Wisconsin S&LA	Kaukauna	WI
Columbia S&LA	Milwaukee	WI
Reliance S&LA	Milwaukee	WI
St. Francis Federal Savings Bank	St. Francis	WI
First FSB of Wisconsin	Waukesha	WI
Marquette Savings Bank, SA	West Allis	WI
Key Savings Bank, SA	Wisconsin Rapids	WI

**Federal Home Loan Bank of Des Moines—District 8**  
907 Walnut Street, Des Moines, Iowa 50309

First FS&LA of Carroll	Carroll	IA
Clinton FS&LA	Clinton	IA
Citizens FSB	Davenport	IA
Iowa Savings Bank	Des Moines	IA
Midland SB, FSB	Des Moines	IA
Washington FS&LA	Washington	IA
First State FS&LA	Hutchinson	MN
Home Federal Savings Bank	Spring Valley	MN
Wells Federal Bank, FSB	Wells	MN
Worthington FS&LA	Worthington	MN
First Missouri FS&LA	Brookfield	MO
Investors FB&SA	Chillicothe	MO
Boone National S&LA, FA	Columbia	MO
Ozarks FS&LA	Farmington	MO
St. Francois County S&LA	Farmington	MO
Hardin SA	Hardin	MO
Farm & Home Savings Association	Kansas City	MO
Kirksville FSB	Kirksville	MO
Macon Building and Loan Assoc.	Macon	MO
American Home S&LA	St. Louis	MO
Quarry City S&LA	Warrensburg	MO



Member	City	State
Metropolitan FB, FSB	Fargo	ND
Home Federal Savings Bank	Sioux Falls	SD

**Federal Home Loan Bank of Dallas—District 9**  
5605 N. MacArthur Boulevard, 95h Floor, Irving, Texas 75038

First Financial Bank, a FSB	El Dorado	AR
Forrest City S&LA	Forrest City	AR
Federal Savings Bank of Rogers	Rogers	AR
St. Tammany Homestead Association	Covington	LA
Teche Federal Savings Bank	Franklin	LA
Florida Parishes HA	Hammond	LA
Lafayette BA	Lafayette	LA
Mutual S&LA	Metairie	LA
Guaranty S&HA	New Orleans	LA
Hibernia H&SA	New Orleans	LA
Ponchatoula HA	Ponchatoula	LA
Ruston B&LA	Ruston	LA
First FS&LA	Thibodaux	LA
Amory FS&LA	Amory	MS
First FSB	Belzoni	MS
Natchez First FSB	Natchez	MS
First Federal Bank for Savings	Starkville	MS
Mutual Building & LA, FA	Las Cruces	NM
Mercantile Banc and Trust, A SA	Dallas	TX
Guardian Savings & LA	Houston	TX
Liberty SA	Houston	TX
First FS&LA	Littlefield	TX
Mineola FS&LA	Mineola	TX
Orange Savings and LA	Orange	TX
Fort Bend FS&LA	Rosenberg	TX
Smithville S&LA	Smithville	TX
Sulphur Springs L&BA	Sulphur Springs	TX
South Texas Savings Bank, FSB	Victoria	TX

**Federal Home Loan Bank of Topeka—District 10**  
Post Office Box 176, Topeka, Kansas 66601

Del Norte FS&LA	Del Norte	CO
Centennial SB, A FSB	Durango	CO
Home SA	Chanute	KS
Landmark FSA	Dodge City	KS
Eureka FS&LA	Eureka	KS
First Kansas FSA	Osawatomie	KS
The Pioneer S&LA	Prairie Village	KS
United S&LA	Wichita	KS
First Community FS&LA	Winfield	KS
Custer FS&LA	Broken Bow	NE
Home FS&LA of Ada	Ada	OK
Fidelity FS&LA	Claremore	OK
American Bank and Trust	Edmond	OK
Liberty FSB	Enid	OK
Fairview S&LA	Fairview	OK
The Globe Savings Bank, FSB	Harrah	OK
The Okmulgee S&LA	Okmulgee	OK
Osage FS&LA of Pawhuska	Pawhuska	OK
The Stillwater S&LA	Stillwater	OK

**Federal Home Loan Bank of San Francisco—District 11**  
307 East Chapman Avenue, Orange, California 92666

Placer Savings & Loan Asso	Auburn	CA
Great Western Bank, a FSB	Chatsworth	CA
Enterprise Savings & Loan Asso	Compton	CA
Glendale Federal Bank, FSB	Glendale	CA
Hawthorne S&LA	Hawthorne	CA
First Global	Los Angeles	CA
Highland Federal Bank, a FSB	Los Angeles	CA
Downey Savings & Loan Asso	Newport Beach	CA
Universal Savings Bank	Orange	CA
Century Fed. Savings & Loan Asso	Pasadena	CA
Provident Savings Bank, FSB	Riverside	CA
Sacramento Savings Bank	Sacramento	CA
Continental Savings of America, a FS&LA	San Francisco	CA
Pan American Savings Bank	San Mateo	CA
New Horizons S&LA	San Rafael	CA
Del Amo Savings Bank, FSB	Torrence	CA
Surety FSB	Vallejo	CA
Watsonville FS&LA	Watsonville	CA
Quaker City FS&LA	Whittier	CA
First Western Savings Association	Las Vegas	NV



Member	City	State
<b>Federal Home Loan Bank of Seattle—District 12</b> 1501 4th Avenue, Seattle, Washington 98101-1693		
First Federal Bank of Idaho, FSB.....	Lewiston.....	ID
First FS&LA of Montana.....	Hamilton.....	MT
Empire FS&LA.....	Livingston.....	MT
Pioneer Bank, a FSB.....	Baker City.....	OR
Evergreen FS&LA.....	Grants Pass.....	OR
Klamath First FS&LA.....	Klamath Falls.....	OR
Olympus Bank, a FSB.....	Salt Lake City.....	UT
Heritage Savings Bank.....	St. George.....	UT
Riverview Savings Bank.....	Camus.....	WA
Heritage Bank, FSB.....	Olympia.....	WA
Olympia FS&LA.....	Olympia.....	WA
First FS&LA of Port Angeles.....	Port Angeles.....	WA
Metropolitan FS&LA of Seattle.....	Seattle.....	WA
Washington Mutual, a FSB.....	Seattle.....	WA
Yakima FS&LA.....	Yakima.....	WA
Tri-County FS&LA.....	Torrington.....	WY

### C. Due Dates

Members selected for review must submit completed Community Support Statements to their FHLBank no later than December 31, 1992.

All public comments concerning the Community Support performance of selected members must be submitted to the member's FHLBank no later than December 31, 1992.

### D. Notice to Members Selected

Within 15 days of this Notice's publication in the Federal Register, the individual FHLBanks will notify each member selected to be reviewed that the member has been selected and when the member must return the completed Community Support Statement. At that time, the FHLBank will provide the member with a Community Support Statement form and written instructions and will offer assistance to the member in completing the Statement. The FHLBank will only review Statements for completeness, as the Finance Board will conduct the actual review.

### E. Notice to Public

At the same time that the FHLBank members selected for review are notified of their selection, each FHLBank will also notify community groups and other interested members of the public. The purpose of this notification will be to solicit public comment on the Community Support records of the FHLBank members pending review.

Any person wishing to submit written comments on the Community Support performance of a FHLBank member under review in this quarter should send those comments to the member's FHLBank by the due date indicated in order to be considered in the review process.

Dated: November 9, 1992.

By the Federal Housing Finance Board.

Daniel F. Evans, Jr.,

Chairman.

[FR Doc. 92-27570 Filed 11-13-92; 8:45 am]

BILLING CODE 6725-01-M

## FEDERAL LABOR RELATIONS AUTHORITY

### Senior Executive Service; Performance Review Board

**AGENCY:** Federal Labor Relations Authority.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the names of the Performance Review Board.

**DATES:** (Publication date)

**FOR FURTHER INFORMATION CONTACT:** James M. Cheskawich, Director of Personnel and EEO, Federal Labor Relations Authority, 500 C Street, SW., Washington, D.C. 20424-0001, (202) 382-0751.

**SUPPLEMENTARY INFORMATION:** Sec. 4314(c) (1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations, to the appointing authority relative to the performance of the senior executive.

The following persons will serve on the FLRA's Performance Review Board:

Solly Thomas, Office of the Executive Director, FLRA

Brenda M. Robinson, Office of the General Counsel, FLRA

Peter J. Basso, Federal Highway Administration

Shirely Bednarz, National Labor Relations Board

Thomas Lanphear, Merit Systems Protection Board

James M. Cheskawich,

Director of Personnel & EEO, Office of Administration.

[FR Doc. 92-27721 Filed 11-13-92; 8:45 am]

BILLING CODE 6727-01-M

## FEDERAL MARITIME COMMISSION

### Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-010099-012.

Title: International Council of Containership Operators.

Parties:

American President Lines, Ltd.

A.P. Moller (Maersk Line)

Blue Star Line Ltd.

Compagnie Generale Maritime

Compagnie Maritime Belge S.A.

Crowley Maritime Corporation

Hamburg-Sudamerikanische

Dampfschiffahrt-Gesellschaft Eggert



& Amsinck (Columbus Line)  
 Hapag-Lloyd AG  
 Kawasaki Kisen Kaisha, Ltd.  
 Koninklijke Nedlloyd Group N.V.  
 Lykes Bros. Steamship Co., Inc.  
 Mitsui OSK Lines, Ltd.  
 Neptune Orient Lines Ltd.  
 Nippon Yusen Kaisha  
 Orient Overseas Container Line Ltd.  
 P & O Containers Ltd.  
 Sea-Land Service, Inc.  
 Senator Linie  
 Societa Finanziari Marittima  
 (Finmare)  
 South African Marine Corp., Ltd.  
 The Australian National Line  
 Transatlantic Shipping Co., Ltd.  
 Transportation Maritima Mexicana,  
 S.A. de C.V.  
 United Arab Shipping Company  
 (S.A.G.)  
 Wilh. Wilhemsen  
 Zim Israel Navigation Co., Ltd.

**Synopsis:** The proposed amendment will add Cho Yang Shipping Co., Ltd. and Hanjin Shipping as parties to the Agreement. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: November 9, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92-27633 Filed 11-13-92; 8:45 am]

BILLING CODE 6730-01-M

#### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

**Agreement No.:** 224-002401-013.

**Title:** City of Long Beach/Sea-Land Service, Inc. Preferential Assignment Agreement

**Parties:**

The City of Long Beach  
 Sea-Land Service, Inc.

**Synopsis:** The Agreement extends the time for Sea-Land to exercise its option

to enlarge the marine container terminal on Pier G in the Harbor District of the City of Long Beach.

**Agreement No.:** 224-004070-006.

**Title:** San Francisco/Stevedoring Services of America Terminal Agreement

**Parties:**

San Francisco Port Commission  
 Stevedoring Services of America

**Synopsis:** The amendment extends the term of the Agreement through January 31, 1993.

**Agreement No.:** 202-000150-102.

**Title:** Trans-Pacific Freight Conference of Japan

**Parties:**

American President Lines, Ltd.  
 Kawasaki Kisen Kaisha, Ltd.  
 Mitsui O.S.K. Lines, Ltd.  
 A.P. Moller-Maersk Line  
 Neptune Orient Lines Limited  
 Nippon Yusen Kaisha  
 Orient Overseas Container Line, Inc.  
 Sea-Land Service, Inc.  
 Wilhelmsen Lines AS

**Synopsis:** The proposed amendment modifies Articles 8 (Voting) and 14 (Service Contracts) by revising the voting requirements for Conference service contract amendments.

**Agreement No.:** 202-003103-105.

**Title:** Japan-Atlantic and Gulf Freight Conference

**Parties:**

Mitsui O.S.K. Lines, Ltd.  
 A.P. Moller-Maersk Line  
 Neptune Orient Lines Limited  
 Nippon Yusen Kaisha  
 Wilhelmsen Lines AS

**Synopsis:** The proposed amendment modifies Articles 8 (Voting) and 14 (Service Contracts) by revising the voting requirements for Conference service contract amendments.

By Order of the Federal Maritime Commission.

Dated: November 9, 1992.

[FR Doc. 92-27619 Filed 11-13-92; 8:45 am]

BILLING CODE 6730-01-M

#### Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License Number: 3264.

Name: Richard Wayne Johnson dba American Paragon.

Address: 904 Manhattan Ave., No. 9, Manhattan Beach, CA 90266.

Date Revoked: August 8, 1992.

Reason: Failed to furnish a valid surety bond.

License Number: 2477.

Name: MDR Enterprises, Inc.

Address: 7701 Pacific St., Ste 15, Omaha, NE, 68114.

Date Revoked: September 19, 1992.

Reason: Failed to furnish a valid surety bond.

License Number: 1933.

Name: Joseph & Schiller, Inc.

Address: 8725 N.W. 18th Terrace, Ste. 301, Miami, FL 33172.

Date Revoked: September 30, 1992.

Reason: Failed to furnish a valid surety bond.

License Number: 2006.

Name: John W. Kenahan.

Address: 20705 Western Ave. Ste. 209, Torrance, CA 90501.

Date Revoked: September 30, 1992.

Reason: Failed to furnish a valid surety bond.

License Number: 3522.

Name: Vintage Express Inc. dba Vintage Express.

Address: 2750 No. 29th Ave., Hollywood, FL 33020.

Date Revoked: October 1, 1992.

Reason: Failed to furnish a valid surety bond.

Bryant L. VanBrackle,

Director Bureau of Tariffs, Certification and Licensing.

[FR Doc. 92-27607 Filed 11-13-92; 8:45 am]

BILLING CODE 6730-01-M

#### FEDERAL RESERVE SYSTEM

##### Agency Forms Under Review

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the submission of proposed information collection to the Office of Management and Budget (OMB) for its review and approval under the Paperwork Reduction Act and under OMB regulations on Controlling Paperwork Burdens on the Public. A copy of the proposed information collection and supporting documents is available from the agency clearance officer listed in the notice. Any comments on the proposal should be sent to the agency clearance officer and to the OMB desk officer listed in this notice.

**DATES:** Comments on this proposed revision to information collection are welcome and should be submitted on or before December 15, 1992.



**FOR FURTHER INFORMATION CONTACT:**

Federal Reserve Board Clearance  
Officer: Mary M. McLaughlin, Division  
of Research and Statistics, Board of  
Governors of the Federal Reserve  
System, Washington, DC 20551 ((202)  
452-3829).

OMB Desk Officer: Gary Waxman,  
Office of Information and Regulatory  
Affairs, Office of Management and  
Budget, New Executive Office  
Building, room 3208, Washington, DC  
20503 ((202) 395-7340).

**SUPPLEMENTARY INFORMATION:** Request  
for OMB approval to revise the  
following report:

*Report title:* Report of Assets and  
Liabilities of U.S. Branches and  
Agencies of Foreign Banks.

*Agency form number:* FFIEC 002.

*OMB Docket number:* 7100-0032.

*Frequency:* Quarterly.

*Reporters:* U.S. branches and agencies  
of foreign banks.

*Annual reporting hours:* 44,490.

*Estimated average hours per  
response:* 18.82.

*Number of respondents:* 591.

Small businesses are affected.

This information collection is  
mandatory (12 U.S.C. 3105(b)(2),  
1817(a)(1) and (3), and 3102(b)) and is  
given partial confidential treatment.

On a quarterly basis, all U.S. branches  
and agencies of foreign banks (U.S.  
branches) are required to file detailed  
schedules of assets and liabilities in the  
form of a condition report and a variety  
of supporting schedules. This balance  
sheet information is used to fulfill the  
supervisory and regulatory requirements  
of the International Banking Act of 1978.  
The data are also used to augment the  
bank credit, loan and deposit  
information needed for monetary policy  
purposes. The report is collected and  
processed by the Federal Reserve on  
behalf of all three federal bank  
regulatory agencies. The proposed  
changes affect several existing  
schedules: the proposed changes are as  
follows:

(1) A new part II would be added to  
Schedule C, "Loans," to collect data  
once each year as of June 30 on loans to  
small businesses and small farms, and  
would be filed only by insured branches.  
This data collection would implement  
Section 122 of FDICIA and may assist  
the FRB in fulfilling the requirements of  
Section 477 of FDICIA. In general,  
branches would be required to report  
information on the number and amount  
outstanding of (a) nonfarm  
nonresidential real estate loans and  
commercial loans with original amounts  
of \$100,000 or less, more than \$100,000

through \$250,000, and more than  
\$250,000 through \$1,000,000 and (b)  
agricultural real estate and agricultural  
loans with original amounts of \$100,000  
or less, more than \$100,000 through  
\$250,000, and more than \$250,000  
through \$500,000.

(2) A memorandum item would be  
added to Schedule O, "Other Data for  
Deposit Insurance Assessments," for  
"preferred deposits," as required by  
Section 141(c) of FDICIA. These deposits  
are defined by statute as deposits of any  
public unit . . . which are secured or  
collateralized as required under State  
law.

(3) Two new items would be added to  
Schedule L, "Off-Balance Sheet Items,"  
for "all other off-balance sheet  
liabilities" and for "all other off-balance  
sheet assets," in order to satisfy a  
provision of Section 121 of FDICIA.

(4) A new item would be added to  
Schedule O, "Other Data for Deposit  
Insurance Assessments," for "deposits  
in lifeline accounts." Section 232(b)(1) of  
FDICIA requires this new item. Although  
this item would be added to the report  
forms for March 31, 1993, branches  
would not be required to complete the  
item until the FRB and the FDIC  
establish the minimum requirements for  
"lifeline accounts" pursuant to Section  
232(a) of FDICIA.

(5) A new memorandum item would  
be added to Schedule O for "estimated  
uninsured deposits in the branch  
(excluding IBF)," in order for the FDIC to  
comply with Section 141(c) of FDICIA.  
The new memorandum item would  
require branches to report this estimate  
if they have a method or procedure for  
determining a better estimate than an  
estimate determined by multiplying the  
number of accounts of more than  
\$100,000 by \$100,000 and subtracting the  
result from the amount of deposit  
accounts of more than \$100,000. Banks  
currently report the number and amount  
of deposit accounts of more than  
\$100,000 in Schedule O.

In developing the requirements for  
reporting data on loans to small  
businesses and small farms, the FFIEC  
published in the **Federal Register**  
proposed reporting requirements on  
small business and small farm lending  
for a 30-day public comment period on  
May 20, 1992. The proposed reporting  
change has been amended to reflect  
comments received by the public. The  
FFIEC will publish a separate notice in  
the **Federal Register** summarizing and  
responding to letters received from its  
request for public comment.

The effective date for the reporting of  
loans to small businesses and small  
farms, if approved, would be the June 30,  
1993, report date. The effective date for

all other changes, if approved, would be  
the March 31, 1993, report date.

Board of Governors of the Federal Reserve  
System, November 9, 1992.

William W. Wiles,

*Secretary of the Board.*

[FR Doc. 92-27662 Filed 11-13-92; 8:45 am]

BILLING CODE 6210-01-M

**Agency Forms Under Review**

**AGENCY:** Board of Governors of the  
Federal Reserve System.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the  
submission of proposed information  
collection to the Office of Management  
and Budget (OMB) for its review and  
approval under the Paperwork  
Reduction Act and under OMB  
regulations on Controlling Paperwork  
Burdens on the Public. A copy of the  
proposed information collection and  
supporting documents is available from  
the agency clearance officer listed in the  
notice. Any comments on the proposal  
should be sent to the agency clearance  
officer and to the OMB desk officer  
listed in this notice.

**DATES:** Comments on this proposed  
revision to information collection are  
welcome and should be submitted on or  
before December 15, 1992.

**FOR FURTHER INFORMATION CONTACT:**

Federal Reserve Board Clearance  
Officer: Mary M. McLaughlin, Division  
of Research and Statistics, Board of  
Governors of the Federal Reserve  
System, Washington, DC 20551 ((202)  
452-3829).

OMB Desk Officer: Gary Waxman,  
Office of Information and Regulatory  
Affairs, Office of Management and  
Budget, New Executive Office  
Building, room 3208, Washington, DC  
20503 ((202) 395-7340).

**SUPPLEMENTARY INFORMATION:** Request  
for OMB approval to revise the  
following report:

*Report title:* Reports of Condition and  
Income.

*Agency form number:* FFIEC 031-034.

*OMB Docket number:* 7100-0036.

*Frequency:* Quarterly.

*Reporters:* State member banks.

*Annual reporting hours:* 160,126.

*Estimated average hours per response:*  
40.6.

*Number of respondents:* 986.

Small businesses are affected

This information collection is  
mandatory (12 U.S.C. 324) and is given  
partial confidential treatment.



On a quarterly basis, state member banks are required to file detailed schedules of assets, liabilities, and capital in the form of a condition report and summary statement; detailed schedule of operating income and expense, sources and disposition of income, and changes in equity capital in the form of an income statement; and a variety of supporting schedules. Data are used for supervisory and monetary policy purposes. The proposed changes affect several existing Call Report schedules. Unless otherwise indicated, the proposed changes would apply to all four sets of reporting forms (FFIEC 031, FFIEC 032, IEC 033, and FFIEC 034); the proposed changes are as follows:

(1) A new part II would be added to Schedule RC-C, "Loans and Lease Financing Receivables," to collect data once each year as of June 30 on loans to small businesses and small farms. This data collection would implement Section 122 of FDICIA and may assist the FRB in fulfilling the requirements of Section 477 of FDICIA. In general, banks would be required to report information on the number and amount outstanding of (a) nonfarm nonresidential real estate loans and commercial loans with original amounts of \$100,000 or less, more than \$100,000 through \$250,000, and more than \$250,000 through \$1,000,000 and (b) agricultural real estate and agricultural loans with original amounts of \$100,000 or less, more than \$100,000 through \$250,000, and more than \$250,000 through \$500,000.

(2) A memorandum item would be added to Schedule RC-E, "Deposit Liabilities," for "preferred deposits," as required by Section 141(c) of FDICIA. These deposits are defined by statute as deposits of any public unit . . . which are secured or collateralized as required under State law.

(3) The coverage of the memorandum items in Schedule RC-E, "Deposit liabilities," on brokered deposits would be modified by bringing the Call Report definition of "deposit broker" into conformity with the definition of this term that is contained in Section 29(g) of the Federal Deposit Insurance Act in order to facilitate the monitoring of compliance with the limitations on brokered deposits and deposit solicitations imposed by Section 301 of FDICIA.

(4) A new item would be added to Schedule RC-L, Off-Balance Sheet Items, for "all other off-balance sheet assets," in order to satisfy a provision of Section 121 of FDICIA.

(5) The coverage of the items in Schedule RC-M, "Memoranda," on "extensions of credit by the reporting bank to its executive officers, principal

shareholders, and their related interests" would be expanded to include "directors and their related interests" as a result of amendments to Section 22(h) of the Federal Reserve Act that were made by Section 306 of FDICIA.

(6) A new item would be added to Schedule RC-O, "Other Data for Deposit Insurance Assessments," for "deposits in lifeline accounts," Section 232(b)(1) of FDICIA requires this new item. Although this item would be added to the report forms for March 31, 1993, banks would not be required to complete the item until the FRB and the FDIC establish the minimum requirements for "lifeline accounts" pursuant to Section 232(a) of FDICIA.

(7) A new memorandum item would be added to Schedule RC-O for "estimated uninsured deposits (in domestic offices) of the bank," in order for the FDIC to comply with Section 141(c) of FDICIA. The new memorandum item would require banks to report this estimate if they have a method or procedure for determining a better estimate than an estimate determined by multiplying the number of accounts of more than \$100,000 by \$100,000 and subtracting the result from the amount of deposit accounts of more than \$100,000. Banks currently report the number and amount of deposit accounts of more than \$100,000 in Schedule RC-O.

In developing the requirements for reporting data on loans to small businesses and small farms, the FFIEC published in the *Federal Register* proposed reporting requirements on small business and small farm lending for a 30-day public comment period on May 20, 1992. The proposed reporting change has been amended to reflect comments received by the public. The FFIEC will publish a separate notice in the *Federal Register* summarizing and responding to letters received from its request for public comment.

The effective date for the reporting of data on loans to small businesses and small farms, if approved, would be the June 30, 1993, report date. The effective date for all other changes, if approved, would be the March 31, 1992, report date.

Board of Governors of the Federal Reserve System, November 9, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-27661 Filed 11-13-92; 8:45 am]

BILLING CODE 6210-01-M

#### **ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the final approval of proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per OMB Regulations on Controlling Paperwork Burdens on the Public.

#### **FOR FURTHER INFORMATION CONTACT:**

Federal Reserve Board Clearance Officer: Mary M. McLaughlin, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452-3829; for the hearing impaired only, telecommunications device for the deaf (TTD) (202) 452-3544). Dorothea Thompson, Board of Governors of the Federal Reserve System, Washington, DC 20551. OMB Desk Officer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503 ((202) 395-7340).

**SUPPLEMENTARY INFORMATION:** Final approval under OMB delegated authority of the implementation of the following report:

*Report title:* Survey of Compliance Costs for Truth in Savings.

*Agency form number:* FR 3074.

*OMB Docket number:* 7100-0257.

*Frequency:* One-time survey.

*Reporters:* Commercial banks and thrift institutions.

*Annual reporting hours:* 28,000.

*Estimated average hours per response:* 40.

*Number of respondents:* Approximately 700.

Small businesses are affected

*General description of report:* This information collection is voluntary (12 U.S.C. 4308(a)(3) and 4308(b)(1)) and is given confidential treatment (5 U.S.C. 552(b)(4)).

*Abstract:* The survey will be conducted in two parts. The first part, to be collected in November 1992, will gather information on account practices before implementation of the law. The second part, to be collected in July 1993 shortly after compliance with the law becomes mandatory, will gather information on start-up compliance costs and changes in account practices due to the law. Results from the survey should become available during the fourth quarter of 1993. The survey will assess the impact of the Truth in Savings law on the financial industry. In addition, the data will increase general knowledge of the impact of compliance costs, improving the ability of the

#### **Agency Forms Under Review**

**AGENCY:** Board of Governors of the Federal Reserve System.



Federal Reserve to evaluate the costs of other new rules and to respond to Congressional requests on the potential costs of proposed statutes concerning consumer protection for financial products. Statutes in this area typically concern information disclosures, which is also the main objective of Truth in Savings.

On September 28, 1992, the Board granted initial approval of this survey. Notice of the proposed action was published in the *Federal Register*. The proposal was also distributed to members of the Board's Consumer Advisory Council as well as a few additional representatives of industry and consumer groups. The comment period expired on October 19, 1992. The Board considered the comments that were received and determined that the survey be conducted as originally proposed with revisions described below.

#### Summary of Comments

Six written comments were received, three from consumer representatives and three from the banking industry. The consumer representatives expressed worries about potential bias by respondents which could lead to inflation of these cost estimates. They also felt that possible benefits from the law were not adequately addressed in the proposed survey. The comments from industry representatives concerned the format and clarity of the questionnaire.

#### Revisions to Proposal

Improvements have been made to the format of the questionnaire and the wording of certain questions in order to make the form easier to read and understand, to clarify questions, and to avoid ambiguities.

A few questions have been added to address the concerns of the commenters representing consumer interests. These commenters felt that the survey was negative in tone and did not sufficiently inquire about the possible benefits of the law.<sup>1</sup> In response to this concern, questions have been added about use of the investable balance method of interest calculation prior to Truth in Savings. Consumer commenters feel that elimination of this calculation method is

a major consumer benefit of the law, and asked that information be collected about how institutions disclosed this practice before the law was passed. A question also has been added to ask about the variety of terms used for the "yield" in advertisements, since consumer representatives also deem the standardization of terminology to be an important benefit of the new law. In addition, the survey question specifically aimed at eliciting information about any benefits that financial institutions have enjoyed has been expanded to include other suggestions about benefits (such as fairer competition with other institutions' advertising practices).

Consumer commenters also suggested that comparisons be made between institutions in states that already have Truth in Savings laws and institutions in other states. Such comparisons were in fact planned, but this intention was not apparent in the survey instrument because no questions need be asked to perform the analysis.

#### Estimate of Respondent Burden

The Federal Reserve initially did not have a solid estimate of the number of hours that would be needed for institutions to track their costs and to complete the survey; therefore the *Federal Register* notice solicited comment on this question. None of the commenters offered information about the time that would be required. Therefore, based on experience with the Functional Cost Analysis program, the Federal Reserve estimates the burden to be 40 hours per respondent.

Board of Governors of the Federal Reserve System, November 9, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-27660 Filed 11-13-92; 8:45 am]

BILLING CODE 6210-01-M

#### Broadstreet, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for

processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than November 30, 1992.

**A. Federal Reserve Bank of Atlanta** (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Broadstreet, Inc.*, Atlanta, Georgia; to become a bank holding company by acquiring 94 percent of the voting shares of AmTrade International Bank of Georgia, Atlanta, Georgia, a *de novo* bank. AmTrade International Bank of Georgia has also applied pursuant to section 25 of the Federal Reserve Act (12 U.S.C. § 601) to establish AmTrade International Bank of Florida, Miami, Florida, an Agreement Corporation.

Board of Governors of the Federal Reserve System, November 9, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-27664 Filed 11-13-92; 8:45 am]

BILLING CODE 6210-01-F

#### Marquette Bancshares, Inc.; Acquisition of Company Engaged in Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a) or (f) of the Board's Regulation Y (12 CFR 225.23(a) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to engage in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that

<sup>1</sup> Part of this criticism comes from the apparent assumption that the survey is a cost/benefit study, which is not in fact the case. The Federal Reserve intends to evaluate potential consumer benefits from the law through the Survey of Consumer Attitudes conducted by the Survey Research Center of the University of Michigan, but these benefits would be ongoing. The Federal Reserve is not, however, collecting ongoing compliance cost data. Therefore, no overall assessment of the regulation on a strict cost/benefit basis is contemplated.



outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 7, 1992.

**A. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Marquette Bancshares, Inc.*, Minneapolis, Minnesota; to engage *de novo* in providing employee benefits consulting services. The Board has previously determined that this activity is closely related to banking. *Centerre Bancorporation*, 74 Federal Reserve Bulletin 136 (1988); *Norstar Bancorp, Inc.*, 72 Federal Reserve Bulletin 729 (1986).

Board of Governors of the Federal Reserve System, November 9, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-27668 Filed 11-13-92; 8:45 am]

BILLING CODE 6210-01-F

#### **Northern Trust Corporation; Notice of Application to Engage *de novo* in Permissible Nonbanking Activities**

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may

express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 7, 1992.

**A. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Northern Trust Corporation*, Chicago, Illinois; to engage *de novo* through its subsidiary, *Northern Futures Corporation*, Chicago, Illinois, in executing and clearing futures contracts and options on those futures contracts for customers with respect to the NIKKEI 225 Stock Average to be traded on the Chicago Mercantile Exchange pursuant to § 225.25(b)(18) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 9, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-27669 Filed 11-13-92; 8:45 am]

BILLING CODE 6210-01-F

#### **Peoples Financial Services, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities**

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than December 7, 1992.

**A. Federal Reserve Bank of Atlanta** (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Peoples Financial Services, Inc.*, Cookeville, Tennessee; to acquire Citizens Federal Savings Bank, Rockwood, Tennessee, and thereby engage in the operation of a savings bank pursuant to § 225.25(b)(9) of the Board's Regulation Y. This activity will be conducted in the State of Tennessee.

**B. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Merchants and Manufacturers Bancorporation, Inc.*, Greendale, Wisconsin; to acquire Lincoln Savings Bank, S.A., Milwaukee, Wisconsin, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y. This activity will be conducted in the State of Wisconsin.

**C. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Union Planters Corporation*, Memphis, Tennessee; to acquire SaveTrust Federal Savings Bank, Dyersburg, Tennessee, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of



the Board's Regulation Y, and to engage indirectly, through SaveTrust, in the sale of credit life, accident and health insurance as principal, agent, or broker, directly related to the extensions of credit by SaveTrust and limited to assuring the repayment of the outstanding balance due on the extension of credit in the event of the death, disability, or involuntary unemployment of the debtor, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y. **Comments on this application must be received by November 30, 1992.**

2. *Union Planters Corporation*, Memphis, Tennessee; to acquire Security Trust Federal Savings and Loan Association, Knoxville, Tennessee, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y, and to engage indirectly, through Security Trust, in the sale of credit life, accident and health insurance as principal, agent, or broker, directly related to the extensions of credit by Security Trust and limited to assuring the repayment of the outstanding balance due on the extension of credit in the event of the death, disability, or involuntary unemployment of the debtor, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y. **Comments on this application must be received by November 30, 1992.**

Board of Governors of the Federal Reserve System, November 9, 1992.

Jennifer J. Johnson,

*Associate Secretary of the Board.*

[FR Doc. 92-27667 Filed 11-13-92; 8:45 am]

BILLING CODE 6210-01-F

#### **UniSouth Capital Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies**

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on

an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 7, 1992.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *UniSouth Capital Corporation*, Columbus, Mississippi; to become a bank holding company by acquiring 100 percent of the voting shares of UniSouth Banking Corporation, Columbus, Mississippi.

B. **Federal Reserve Bank of Kansas City** (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Liberty Capital Corporation Employee Stock Ownership Plan*, Hugo, Colorado; to become a bank holding company by acquiring 25.04 percent of the voting shares of First Liberty Capital Corporation, Hugo, Colorado, and thereby indirectly acquire First National Bank of Hugo, Hugo, Colorado.

2. *Peoples Trust of 1987*, Ottawa, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples, Inc., Ottawa, Kansas, and thereby indirectly acquire Peoples Savings, Inc., Ottawa, Kansas, and Peoples National Bank and Trust, Ottawa, Kansas.

Board of Governors of the Federal Reserve System, November 9, 1992.

Jennifer J. Johnson,

*Associate Secretary of the Board.*

[FR Doc. 92-27666 Filed 11-13-92; 8:45 am]

BILLING CODE 6210-01-F

#### **Charles Thomas Wangenstein V; Change in Bank Control Notice**

##### **Acquisition of Shares of Banks or Bank Holding Companies**

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested

persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than December 3, 1992.

A. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Charles Thomas Wangenstein, V*, to acquire an additional 0.01 percent of the voting shares of Chisholm Bancshares, Inc., Chisholm, Minnesota, for a total of 10 percent, and thereby indirectly acquire First National Bank, Chisholm, Minnesota.

Board of Governors of the Federal Reserve System, November 9, 1992.

Jennifer J. Johnson,

*Associate Secretary of the Board.*

[FR Doc. 92-27665 Filed 11-13-92; 8:45 am]

BILLING CODE 6210-01-F

#### **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

##### **Health Care Financing Administration**

[BPO-106-PN]

##### **Medicare Program; Data, Standards and Methodology Used To Establish Fiscal Year 1993 Budgets for Fiscal Intermediaries and Carriers**

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Proposed notice.

**SUMMARY:** This notice describes the data, standards and methodology that will be used to establish fiscal intermediary and carrier budgets for the fiscal year beginning October 1, 1992. Intermediaries and carriers are public or private entities that participate in the administration of the Medicare program by performing claims processing and benefit payment functions. This notice is published in accordance with sections 1816(c)(1) and 1842(c)(1) of the Social Security Act which require us to publish for public comment the data, standards and methodology we intend to use to establish budgets for Medicare intermediaries and carriers.

**DATES:** Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on December 16, 1992.

**ADDRESSES:** Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPO-106-PN, P.O. Box 26676, Baltimore, Maryland 21207.



Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Due to staffing and resource limitations, we cannot accept audio, video or facsimile (FAX) copies of comments. In commenting, please refer to file code BPO-106-PN. Written comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202-245-7890).

**FOR FURTHER INFORMATION CONTACT:**  
Tom Hessenauer (410) 966-7542.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Under sections 1816(a) and 1842(a) of the Social Security Act (the Act), public or private organizations and agencies may participate in the administration of the Medicare program under agreements or contracts entered into with the Secretary. These Medicare contractors are known as fiscal intermediaries (section 1816(a) of the Act) and carriers (section 1842(a) of the Act). Intermediaries perform claims processing and benefit payment functions for part A of the program (Hospital Insurance) and carriers perform bill processing and benefit payment functions for part B of the program (Supplementary Medical Insurance). When claims are submitted by providers, and bills by beneficiaries, physicians, and suppliers of services, intermediaries and carriers are responsible for: (1) Determining the eligibility status of a beneficiary; (2) determining whether the services on the submitted claims or bills are covered under Medicare and, if so, the correct payment amounts; and (3) making appropriate payments to the provider, beneficiary, physician, or supplier of services.

Intermediary and carrier performance is monitored by HCFA on both the central office and regional office (RO) levels. In general, issues that affect policies on a national level are addressed by the central office, and issues dealing with regional and local policies, as well as those of an operational nature, are addressed by the ROs. Communication between HCFA and the intermediaries and carriers is continuous, with established

consultation workgroups comprised of representatives from the central office, ROs and Medicare contractors meeting on a regular basis.

**II. Fiscal Intermediary and Carrier Budget Process**

HCFA's central office is responsible for developing a national contractor budget for both Part A and Part B of the Medicare program. The budget is formulated over an 18-month period, beginning in March of the year preceding the fiscal year (FY) to which it applies. It is formulated after receiving input from the contractor community, HCFA, the Department, and the Office of Management and Budget (OMB), prior to submittal to the President for approval and forwarding to Congress. Once the national contractor budget has been approved, HCFA issues Budget and Performance Requirements (BPRs), which serve as guidelines for contractors in preparing their individual budgets for submission to HCFA.

The budgets submitted by contractors are reviewed by the RO's during a budget level determination process based on current claims processing trends, legislative mandates, administrative initiatives, current year performance standards and criteria, and the availability of funds appropriated by Congress. We subsequently allocate funding within these constraints.

Section 4035(a) of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), Public Law 100-203, amended sections 1816(c)(1) and 1842(c)(1) of the Act by requiring the Secretary to publish in the Federal Register no later than September 1 before each FY, the final data, standards and methodology to be used to establish a national contractor budget for fiscal intermediaries and carriers under these sections for that FY. We also are required to publish our proposed data, standards and methodology at least 90 days before September 1 to provide an opportunity for public comment.

As in prior years, we have had and will continue to seek extensive input from the involved parties, particularly contractors. Their input is used as part of the basis for the national contractor budget that was presented to Congress. That budget (the FY 1993 President's budget) is the basis for the contents of this notice.

To the extent that the comments were received during this comment period warrant revisions to the proposed data, standards and methodology, we will make the necessary changes before publishing the final notice. Moreover, if appropriate, we will issue revised BPRs to intermediaries and carriers. We will

also renegotiate any affected areas of intermediary and carrier budgets within the levels of funding made available by Congress.

This notice contains our proposed data, standards and methodology that we intend to use to establish a national contractor budget for fiscal intermediaries and carriers for FY 1993.

**III. Overview of FY 1993 National Medicare Contractor Budget: Data, Standards and Methodology**

The FY 1993 Medicare contractor budget request was submitted to Congress in February 1992. The workload for the FY 1993 request is expressed in terms of work processed. For Part A, the FY 1993 estimated workload (107.0 million bills) is 7.6 percent more than the FY 1992 workload. For Part B, the estimated workload (630.0 million claims) results in a 10.6 percent increase over the FY 1992 workload.

Our estimates involved the use of a regression model that uses the last 36 months of actual contractor workload data. For the FY 1993 projections, we used January 1991 data, which were the latest available to us at the time. The resulting projections will be updated monthly to assure that the most timely data are available for budgeting purposes.

Based on the projected FY 1992 unit costs for processing bills and claims, we applied a 3.8 percent inflation factor (the economic assumption used by OMB based on changes to the Consumer Price and Wage Indexes as developed by the Department of Labor). This amount was then further adjusted for savings achieved by prior and anticipated productivity investments, and costs associated with new legislation. This calculation resulted in a new unit cost, which, when multiplied by the Part A and/or Part B workloads, determines the total amount required for bills and claims processing in FY 1993.

Feedback received from contractors and ROs during the past several years had led us to believe that contractors can make major improvements in performance if given the authority to manage their budgets. The FY 1993 BPRs give the ROs the authority to set such a budget and the contractors the authority to manage their budgets on a bottom-line basis. Once funding is issued, each contractor will have the flexibility to optimally manage the budget consistent with the scope of work contained in the BPRs. In past years, contractors were not allowed to "shift" more than 5 percent of funds from one line item to another in their budget, as determined



by the lesser of the two line items. This restriction was intended to give contractors some latitude with regard to reporting their costs, yet still allow HCFA to maintain control over the national budget. With the exception of the Payment Safeguards, Productivity Investments and Other line items, contractors now will have total flexibility in the use of funds. However, a 5 percent shift (out of) limitation on individual payment safeguards will be maintained. This will permit unlimited shifting into payment safeguards (a change from previous policies). Shifting into or out of Productivity Investments and other line funding not governed by contract modifications may not exceed 5 percent. Funding governed by contract modifications may not be shifted to other functions or lines.

#### *A. Medicare Contractor Functional Areas*

The Medicare contractor budget consists of seven functional area responsibilities performed by intermediaries for Part A, and nine functional area responsibilities performed by carriers for Part B. The functional area responsibilities for Part A are:

- Bills Payment;
- Reconsideration and Hearings;
- Medicare Secondary Payer;
- Medical Review and Utilization Review;
- Provider Audit (Desk Reviews, Field Audits and Provider Settlements);
- Provider Reimbursement; and
- Productivity Investments.

The functional area responsibilities for Part B are:

- Claims Payment;
- Reviews and Hearings;
- Beneficiary/Physician Inquiries;
- Medical Review and Utilization Review;
- Fraud and Abuse;
- Medicare Secondary Payer;
- Participating Physicians;
- Provider Education and Training
- Productivity Investments.

These functions are funded from the Hospital Insurance (HI) and Supplementary Medical Insurance (SMI) trust funds. The data, standards and methodology used in these functional areas are discussed in section IV. of this preamble. In the following national budget summary, we have combined the discussion of functional areas common to both intermediaries and carriers. However, data specific to Part A or Part B are provided under each heading.

#### *1. Bills and Claims Payment (Part A and Part B)*

We currently estimate the Part A processed workload to be 107.0 million bills in FY 1993. This workload includes 3.1 million claims related to injectable drugs for osteoporosis, and for mammograms, as provided for in sections 4156 and 4163 of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90), Public Law 101-508.

The part B processed workload is currently projected at 630.0 million additional claims based on the current funding available. This workload level includes 6.8 million claims as provided for in sections 4156 and 4163 of OBRA '90.

#### *2. Reconsiderations (Reviews under Part B) and Hearings (Part A and Part B)*

This function includes all activities related to guaranteeing due process of law as a result of contractor action (i.e., disallowances) on bills and claims.

For FY 1993 we expect to achieve reduced costs through expanded use of on-the-record and telephone hearings.

#### *3. Medicare Secondary Payer (Part A and Part B)*

The Medicare Secondary Payer (MSP) function is the first of four initiatives (Medicare Secondary Payer, Medical Review and Utilization Review, Fraud and Abuse, and Provider Audit) we developed as "Payment Safeguards" in an attempt to safeguard the Medicare program against improper payments. The focus of the MSP initiative is to ensure that the Medicare program pays for covered care only after reimbursement from primary insurers has been made.

Medicare contractors are responsible for identifying MSP situations and aggressively pursuing the recovery of improper payments from the appropriate party. The standard for determining the amount of MSP funding a contractor will receive in FY 1993 is based on savings goals, workload volumes, required systems changes, and any special projects that may be assigned to contractors.

In conjunction with the actuary, we develop specific savings goals for each contractor. The goals are developed on estimates of savings to be achieved by contractors for each MSP category: Working aged, disabled, workers' compensation, end-stage renal disease and liability/no-fault. After assigning goals to contractors, funds are allocated based on the various MSP activities a contractor must perform such as processing prepayment claims,

postpayment claims, inquiries, outreach, and for intermediaries, hospital audits.

We have also included funding to process the workloads based on the IRS/SSA/HCFA data match project created by section 6202 of OBRA 1989. The funds are allocated on the basis of the number of matches a contractor will process.

#### *4. Medical Review and Utilization Review (Part A and Part B)*

In addition to processing and paying claims from providers of services and Medicare beneficiaries, contractors perform medical and utilization reviews of claims to determine whether services were medically necessary and constituted an appropriate level of care. The distribution of Medicare contractor funding is based on each contractor's proportion of the workload and individual contractor's medical review/utilization review (MR/UR) projects.

Intermediaries are responsible for medical and utilization review of home health agencies (HHAs), skilled nursing facilities (SNFs), outpatient hospital services (excluding surgery), and other outpatient services such as those provided by rehabilitation facilities, rural health clinics, etc. This review assures that medical care received is necessary and appropriate, and that quality medical service are delivered to medicare beneficiaries. We estimate that the review of HHAs and outpatient services will account for most of the use of Medicare intermediary medical review resources during FY 1993. Medical and utilization review of all HHA provider claims will be the responsibility of Regional Home Health Intermediaries.

Carriers are responsible for medical and utilization review of part B providers and suppliers. Carriers are required to conduct medical and utilization reviews to assure that services rendered are medically necessary, as well as to reveal patterns of utilization that may be inappropriate. To this end, in FY 1993 carriers are expected to provide the necessary education to shape practitioner behavior and discourage providing unnecessary care. We will continue to focus on prepayment review, including additional mandatory prepayment screens.

In addition to our continued focus on prepayment review, we also will direct much more attention to carrier postpayment medical and utilization review during FY 1993. The carrier postpayment process consists of preparing profiles of providers and beneficiaries, and identifying areas for



the development and installation of future prepayment review screens.

#### 5. Provider Audit (Part A only)

For FY 1993 we have planned for a full complement of audit activities to help in the identification and prevention of improper payments. These will include desk reviews, field audits, special audit initiatives and final settlements. We will continue to give priority to the audits of PPS multi-facility hospitals as well as chain-affiliated providers, because of the size of PPS hospitals and the far reaching implication of findings at chain providers which result in substantial savings. In addition, by concentrating effort on HHAs and SNFs which meet minimum utilization criteria, we will maximize the potential savings available from these providers. We will complete the audit of the remaining cost reports affected by conversion of inpatient capital to PPS. We will also focus audit efforts on costs reported and allocated by home offices.

#### 6. Provider Reimbursement (Part A only)

In FY 1993 Medicare contractors are required to provide reimbursement services to 31,900 health care providers. This represents an increase of approximately 7.6 percent over the number of providers requiring reimbursement services in FY 1992.

In determining the amount of reimbursement funding each contractor receives, we analyze provider profiles submitted by contractors. We review prior periods of reimbursement funding and assess the contractor's future needs based on projected provider workload and the availability of funds. We will distribute funds in proportion to workload by provider type.

#### 7. Productivity Investments (Part A and Part B)

The costs of implementing new initiatives designed to improve the effectiveness of Medicare program administration are referred to as productivity investments (PIs). Productivity investments generally provide start-up funds for new or revised contractor activities. Once these projects are operational, funding for these projects becomes part of the contractor's ongoing costs. The criteria for selection of PIs to be implemented are varied. For example, some PIs are required by legislative or regulatory requirements. We also fund projects that will improve administrative cost efficiency, e.g., the Common Working File and Contractor Resource Sharing.

There is no single distribution methodology for the allocation of PI

funds. After we determine the national cost of a PI, funds are distributed among the contractors based on either the contractors' cost estimates or through formulas derived by HCFA based on project specifications. Other PI initiatives require equal effort by all contractors regardless of size, and are, therefore, distributed equally among contractors. Finally, some PIs, such as the Common Working File and Contractor Resource Sharing, are given only to contractors that are involved in the specific projects.

#### 8. Beneficiary/Physician Inquiries (Part B only)

The Medicare program is complex, based on many provisions required by law, regulations and policy dealing with entitlement, coverage of services, comprehensive payment rules, and the rights and responsibilities of beneficiaries. Because contractors are the direct link between beneficiaries, physicians, and the program, this activity includes all costs related to beneficiary, physician and supplier inquiries generated by means of telephone calls, correspondence, and personal visits. This workload is estimated to be 37.4 million inquiries in FY 1993.

#### 9. Participating Physicians (Part B only)

Participating physicians are those who agree to accept assignment on all Medicare claims in return for certain incentives/benefits. All physicians must be given an opportunity to enroll/disenroll in the participation program annually.

For FY 1993, the FY 1992 funding was used as the base and was increased proportional to the workload within the limits of the funding available to HCFA.

Section 9332 of OBRA '86 requires HCFA to pay carrier bonuses for increasing the rate of physician participation in the Medicare program. The methodology used to determine carrier bonuses for FY 1993 will be published in a separate notice.

#### 10. Provider Education and Training (Part B only)

The success of the Medicare program depends upon the continuing cooperation of individuals and institutions providing health care services. The funding provided in FY 1993 will allow carriers to perform the activities outlined in the BPRs and section 4600 of the Medicare Carriers Manual. Funding is also included for education regarding proper diagnostic coding of claims, identification of referring, ordering and furnishing

physician services, and other provisions as required by OBRA '89.

#### 11. Fraud and Abuse (Part B only)

In FY 1993, HCFA plans to expand significantly its efforts at detecting fraud and abuse. As a result, a separate functional line item has been established for this activity starting in FY 1993. Particular emphasis will be placed on using beneficiaries as resources. They are in a unique position to identify fraud, abuse, and overutilization. Carriers will be expected to increase staffing of Medicare Program Integrity Units (MPIUs) which are dedicated to investigation of allegations of Medicare fraud.

Carriers must continue to provide support to HHS/Office of Inspector General (OIG) staff in investigating cases of suspected fraud and abuse. This is in addition to the fraud and abuse activities that currently exist in other intermediary and carrier functions.

#### 12. Printing Claims Forms (Part A and Part B)

Although this activity is not among the seven Part A and nine Part B contractor functional areas, it is a part of the national Medicare contractor budget. In the interest of maintaining standard formats and quality of Medicare entitlement and report forms, intermediaries and carriers supply beneficiary enrollment and provider cost reporting forms. The use of these forms is essential to beneficiary notification, effective and efficient contractor operations, and other program objectives.

#### B. Contractor Unit Cost Calculations

A key step in the contractor budget process is the development of contractor unit costs for processing Part A bills and Part B claims. These bottom line unit costs encompass all budget line items except Provider Audit, Productivity Investments, and Other.

As first implemented in FY 1992, the Complexity Index (CI) is designed to improve efficiency and reduce contractor-by-contractor cost inequities, and is based on the application of the Industrial Engineering (IE) Study commissioned by HCFA. The IE study provided HCFA with an actual, weighted unit cost for each claim type (e.g., inpatient vs. outpatient) and method of submission (electronically submitted or hardcopy) of bill and claim. After adjustment for changes in program emphasis, these unit costs were applied to each contractor's individual workload mix to develop a weighted unit cost that



reflects the complexity of its workload mix. We published in the *Federal Register* an explanation of the Complexity Index in our FY 1992 notice on January 2, 1992 (57 FR 57).

Each contractor has a percentage goal in FY 1992 for increasing the submission of claims electronically. We adjusted the unit costs to reflect achievement of the goals.

After adjusting for various savings and increases associated with initiatives such as the Unique Physician Identifier Number and OBRA 1989 (Section 6111B Clinical Diagnostic Tests—Annual Monitoring and Certification and Section 6204 Physician Ownership and Referral—Annual Monitoring Cost), we then arrayed the contractors' unit costs and identified the contractor at the 60th Percentile. Each contractor with a unit cost higher than the 60th Percentile was held to this unit cost multiplied by the contractor's own CI. Each contractor at or below the 60th Percentile retained its own unit cost multiplied by its own CI.

It should be noted that limitations on the FY 1993 budget could require across-the-board cost cutting measures. In this case, each RO will determine the amount of budget reduction for its contractors.

#### **IV. FY 1993 National Medicare Contractor Budget: Standards, Data, and Methodology**

Since the submission of the President's FY 1993 Medicare contractor budget request to Congress in February 1992, we have been developing Budget and Performance Requirements (BPRs) to be issued to the contractors. These requirements outline the scope of work that intermediaries and carriers are expected to perform during the upcoming FY in each of the functional areas for which they are responsible.

In April 1992, the BPRs will be released to the ROs, and in May 1992, the final BPRs will be issued to the ROs. Individual requirements will be sent to each intermediary and carrier in early June to be used in preparing its FY 1993 budget requests. The ROs will add information pertinent to intermediaries and carriers within their own region. Intermediaries and carriers must submit their budget requests to HCFA no later than 6 weeks after the issuance of the BPRs.

While intermediaries and carriers are preparing their budget requests, HCFA will develop preliminary budget allocations for the functional areas based upon historical patterns, workload growth/inflation assumptions, and any other available relevant information. Both central office and RO staff will review intermediary and

carrier budget requests as they are submitted. RO staff will discuss the differences between the intermediary and carrier requests and the allocations derived by HCFA, and negotiate with each intermediary and carrier a final, mutually acceptable budget within the limits of the funding available to HCFA. The central office prepares a Financial Operating Plan (FOP) for each RO that provides total regional funding authority for each functional area. The ROs in turn prepare a Notice of Budget Approval (NOBA) for each intermediary and carrier that provides a full year budget plan subject to quarterly cash draw limitations.

##### *A. Standards*

The basic scope of work, along with new and special activities that intermediaries and carriers will be expected to perform, are described in the Budget and Performance Requirements (BPRs) package, which will be distributed in draft form to the ROs in May 1992. Intermediaries and carriers are expected to perform the work as described in the BPRs package and in accordance with the standards included in the Contractor Performance Evaluation Program (CPEP) for FY 1993. For consideration in developing their initial budget requests, a draft copy of the CPEP standards will be sent to contractors in May 1992. Final FY 1993 CPEP standards will be published in the *Federal Register*.

##### *B. Data*

In developing the individual intermediary and carrier budgets for FY 1993, we will utilize the following sources of data that contain various workload volumes, functional costs, and manpower information:

- Forms HCFA-1523/1524 (a multipurpose form which serves as the Budget Request, Notice of Budget Approval and Interim Expenditure Report);
- Forms HCFA-1523/1524A (Schedule of Productivity Investments and Other);
- Forms HCFA-1523/1524B (Schedule of Credits, EDP and Overhead);
- Forms HCFA-1523/1524C (Schedule of Appeals);
- Forms HCFA-1523/1524D (Schedule of MSP Costs);
- Forms HCFA-1523/1524E (Schedule of MR Costs);
- Forms HCFA-1525/1525A (Contractor Audit Settlement Report (CASR));
- Schedules A, B & C;
- Provider Reimbursement Profile;
- Schedule of Providers Serviced;
- MSP Savings Report;
- MR/UR Savings Report;

- Form HCFA-2580 (Cost Classification Report);
- Form HCFA-3529 (Facilities and Occupancy Schedule);
- Forms HCFA-1565/1566 Carrier Performance Report/Intermediary Monthly Workload Report;
- HCFA Actuary's Workload Estimates;
- OMB's Economic Assumptions of 3.8 Percent;
- Industrial Engineering Study;
- Savings from Prior Productivity Investments;
- New Legislation Costs;
- Regional Office Recommendations; and
- Contract Provisions.

##### *C. Methodology*

The Medicare contractor budget is built around the previously listed seven functions performed by intermediaries for Part A and nine functions performed by carriers for Part B. FY 1992 was the first year in which we developed a bottom-line unit cost for each individual contractor. However, each contractor's bottom-line unit cost associated with the Complexity Index described in section III.B of this preamble takes precedence over these various line item unit costs. The following narrative describes the methodology used to calculate individual line item costs. This methodology will be considered as general reference for contractors as they develop their FY 1993 budgets, and also to provide additional explanation in determining how certain costs and savings were determined.

##### *1. Bills and Claims Payment*

The individual intermediary and carrier workload levels for FY 1993 are determined by using a statistical forecasting model. We are also projecting the number of bills/claims an intermediary and carrier may expect to have pending at the end of the FY 1992 using the same data. We then combine the FY 1993 receipt estimate with the anticipated end of FY 1992 pending level, and subtract the estimated FY 1993 pending for each intermediary and carrier to establish a processed workload (i.e., Estimated FY 1993 receipts + Estimated end of FY 1992 pending - Estimated end of FY 1993 pending = Estimated FY 1993 Processed Workload).

In order to price individual contractor bills/claims workloads, we develop a unit cost that is the cost of processing a single bill/claim. The individual intermediary and carrier unit costs for FY 1993 are calculated based upon unit costs in the FY 1992 Notices of Budget



Approval. The calculations include increases to recognize the cost of new legislation, and 3.8 percent for price inflation. Reductions associated with the application of the IE study and savings achieved from the Common Working File and other prior PIs will also be part of the formula employed in computing FY 1993 target unit costs. The ROs will negotiate with intermediaries and carriers to resolve any differences within the limits of the funding available to HCFA.

## *2. Reconsiderations (Reviews under Part B) and Hearings*

We will allocate funding based on the amount of dollars spent (line 2 of HCFA-1523/1524) in the prior years, adjusted for inflation and changes in volume. Specifically, we will adjust the previous year's costs for reconsiderations and hearings by 3.8 percent for inflation, and for the estimated percentage change in workload.

The individual intermediary and carrier budget allocations for reconsiderations, reviews, and hearings are estimated by multiplying forecast workloads by the adjusted unit costs.

The ROs will negotiate with intermediaries and carriers to resolve any differences between the HCFA allocations and the contractors' requests, within the limits of the funding available to HCFA.

## *3. Beneficiary/Provider Inquiries (Part B only)*

In order to establish a budgeted amount for beneficiary and provider inquiries, the prior year's cost is increased by 3.8 percent inflation and the projected workload change. We also consider special conditions unique to specific carriers in negotiating the budget. We will use the data to develop a budgeted cost for beneficiary/provider inquiries by multiplying forecasted processed volume times unit cost.

The ROs will negotiate with the carriers to resolve any differences between the HCFA allocations and carrier's requests, within the limits of the funding available to HCFA.

## *4. Provider Reimbursement (Part A only)*

In determining individual intermediary budgets for reimbursement activities, we first calculated a FY 1992 unit cost using the funding included on the latest FY 1992 NOBA (HCFA 1523) and divided that amount by the workload reported on the Schedule of Providers Serviced (SPS) for the same period. The SPS is a listing of all the facilities serviced by the intermediary.

The SPS is submitted with each initial budget request so that a part of the analysis is the comparison of the composition of the provider community service by the intermediary and any change reported between FYs.

This unit cost is increased by 3.8 percent for inflation and is then multiplied by the FY 1993 workload as reported on the SPS. The result is then adjusted for special initiatives.

The ROs will negotiate with the intermediaries to resolve any differences between the HCFA allocations and the intermediaries' requests, within the limits of the funding available to HCFA.

## *5. Provider Audit (Part A only)*

For FY 1993, the provider audit function is divided into three major activities: Field audits, desk reviews, and settlements. The Contractor Auditing and Settlement Report (CASR) (HCFA-1525/1525A) provides a breakout of audit activities and costs by type of provider, and documents the savings incurred as a result of audit activity. Using this as a base, the desk review costs are developed by projecting the number of providers serviced by the unit cost per desk review (developed for the latest CASR for FY 1992) to determine the cost of handling the FY 1993 workload at the FY 1992 unit cost.

Settlement costs are based on the workload projected in the intermediary's budget request multiplied by the unit cost for settlements found in the most recent CASR for FY 1992.

The overriding priority of all audit efforts is the completion of any special activities required by legislation. The second priority is that all cost reports be desk reviewed and, to the extent possible, settled. All of the above costs are adjusted for inflation, which for FY 1993 will be a 3.8 percent increase.

The ROs will negotiate with intermediaries to resolve any differences between the HCFA allocations and the intermediaries' requests, within the limits of the funding available to HCFA.

## *6. Medicare Secondary Payer (MSP)*

We will extract data, including processed volumes, costs and program savings, from the HCFA-1523/1524D and the MSP Savings Report (HCFA-1563/1564) to determine MSP funding allocations. These reports will include IRS/SSA/HCFA data match costs, volumes, and savings. In allocating the FY 1993 MSP budget to individual intermediaries and carriers, we consider (1) estimated potential savings goals by category and by State (e.g., working

aged and spousal working aged insurance, automobile, medical liability and no-fault insurance, end-stage renal disease, disability, and workers compensation); (2) the relationship of available funds to expected savings among contractors; and (3) staffing mix differences, levels of systems sophistication, and special tasks. The ROs will consider items (1), (2), and (3) of this paragraph when negotiating with intermediaries and carriers within the limits of the funding available to HCFA.

## *7. Medical Review/Utilization Review (MR/UR)*

The individual intermediary and carrier MR/UR budgets for FY 1993 will be calculated in three segments: prepayment medical review, postpayment activities, and medical review policy development (carriers only). As part of the BPRs, we ask intermediaries and carriers to estimate (1) the number of bills/claims to be processed by types, and (2) the required funding. We will allocate prepayment and postpayment medical review funding to contractors based upon the workload that an intermediary or carrier projects will be processed under the FY 1993 budget guidelines for medical review and the funds requested by the intermediary or carrier to preform the reviews in accordance with established review levels. Carrier budgets for medical review policy development are based on levels of sophistication of carrier policy development and dissemination and the need for medical direction. The funding calculations for all MR/UR activities will include a 3.8 percent factor for price inflation where applicable.

The ROs will negotiate with intermediaries and carriers to resolve any differences between the HCFA allocations and the contractors' requests, within the limits of the funding available to HCFA.

## *8. Participating Physicians (Part B only)*

In determining the individual carrier funding levels for the participating physician program for FY 1993, we considered the following factors: The number of physicians in the carrier's service area; the carrier's current participation rate; the carrier's recent performance in increasing its participation rate; the scope of work to be performed as outlined in the budget guidelines; and last year's cost experience. Since participating physicians are eligible for toll free telephone lines for electronic billing, allowance has been made for these expenses. Carriers with lower



participation rates will receive greater funding for MAAC violation monitoring and monitoring of nonparticipating physicians for compliance with elective surgery disclosure requirements.

Carrier monitoring funds are allocated based on the national percentage of nonparticipating physicians. All carriers will receive the same funding amount for reporting participation statistics. Our computations of the carriers' budgets for these activities will include 3.8 percent for inflation.

The ROs will negotiate with the carriers to resolve any differences between the HCFA allocations and the carriers' requests, within the limits of the funding available to HCFA.

#### 9. Productivity Investments

The costs of implementing legislation and new initiatives designed to improve the effectiveness and efficiency of Medicare program administration are referred to as Productivity Investments. Several allocation methodologies will be employed in calculating the Productivity Investment budgets for individual intermediaries and carriers. For those projects involving only single contractors or small groups of contractors, we will allocate funds based upon the specifications of the particular project. For those projects involving all intermediaries and/or carriers where the costs are driven by bill/claims volume, we will distribute the funding based upon our workload projections for each contractor. Finally, for those projects involving all intermediaries and/or carriers that require equal effort regardless of the contractor's size, we derived a standard allocation to be given to all contractors.

The ROs will negotiate with the intermediaries and carriers to resolve any differences between the HCFA allocations and the contractors' requests, within the limits of the funding available to HCFA.

#### 10. Provider Education and Training (Part B only)

Distribution of funds made available to HCFA for Provider Education and Training is based upon the ratio of physicians and suppliers in each carrier's service area to the national total of physicians and suppliers.

#### VI. Response to Comments

Because of the large volume of public comments that we usually receive on a proposed notice, we cannot acknowledge or respond to them individually. However, we will address all public comments received by the date specified in the "DATES" section of

this preamble and will respond to the comments in our final notice.

**Authority:** Section of the Social Security Act (42 U.S.C. ).  
(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance Program: No. 13.774, Medicare-Supplementary Medical Insurance.)

**Dated:** May 5, 1992.

**Editorial note:** This document was received by the office of the Federal Register on November 10, 1992.

**William Toby,**  
*Acting Administrator, Health Care Financing Administration.*

[FR Doc. 92-27674 Filed 11-13-92; 8:45 am]

**BILLING CODE 4120-03-M**

#### Privacy Act of 1974; Report of New System Records

**AGENCY:** Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS).

**ACTION:** Notice of new system of records.

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records, "The Medicare Beneficiary Health Status Registry Pilot," HHS/HCFA/ORD, No. 09-70-0053. We have provided background information about the proposed system in the "Supplementary Information" section below. Although the Privacy Act requires only that the portion of the system which describes the routine uses of the system be published for comment, HCFA invites comment on all portions of this notice. See "Dates" section for comment period.

**DATES:** HCFA filed a New System Report with the Chairman of the Committee on Government Operations of the House of Representatives, the Chairman of the Committee on Governmental Affairs of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), on November 12, 1992. The new system of records will become effective January 15, 1993, unless HCFA receives comments which would necessitate alterations to the system. Comments by January 15, 1993.

**ADDRESSES:** The public should address comments to Richard A. DeMeo, HCFA Privacy Act Officer, Office of Budget and Administration, Health Care Financing Administration, Room 2-H-4, East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207-5187. Comments received will be available for inspection at this location.

#### FOR FURTHER INFORMATION CONTACT:

Lynne Penberthy, M.D., Epidemiology Branch, Division of Beneficiary Studies, Office of Research and Demonstrations, Room 2504 Oak Meadows Building, 6325, Security Boulevard, Baltimore, Maryland 21207-5187. Her telephone number is (410) 966-4709.

#### SUPPLEMENTARY INFORMATION: HCFA

proposes to initiate a new system of records for data collected under the Medicare Beneficiary Health Status Registry Pilot, which includes health status information obtained by survey joined with administrative files maintained by HCFA and clinical hospitalization data, the Uniform Clinical Data Set (UCDS). The project will be referred to as the pilot study for the Registry. The pilot study for the Registry is conducted under the authority contained in title IX, section 902(a), of the Public Health Service Act (42 USC 299a(a)), as amended, and title III, section 304, of the Public Health Service Act (42 USC 242b), as amended. HCFA has independent authority to maintain this system under title XVIII, section 1875, of the Social Security Act. This project is sponsored by the Agency for Health Care Policy and Research (AHCPR), to be carried out by HCFA under an interagency agreement (IAA No. NCHSR-90-06).

Research Triangle Institute (RTI), the contractor, will assist HCFA in developing and piloting the Registry. The results from the pilot study for the Registry will be used to assess the feasibility of implementing the full Registry. RTI is contracted by HCFA to assist in the design, execution, and analysis of the Registry pilot. HCFA and AHCPR, will analyze and review the results of the study. The analysis of the pilot data will be incorporated with the recommendations of the Technical Advisory Panel and will be presented by the contractor as a report to the HCFA project officer. A report will be prepared by HCFA staff for the Acting Administrator, HCFA, and the Director, AHCPR, making recommendations for or against the full implementation of the Registry.

Key methodologic issues which will be resolved by the pilot include:

- The relationship between questionnaire length and response rate,
- Reliability of a mailed self-administered questionnaire for elderly Medicare beneficiaries,
- Frequency and reason for proxy responses in the 65-year-old cohort compared with the 76-80-old cohort,
- Reliability of proxy responses,
- Validity of specific items of the questionnaire, and



• Costs of each mode of data collection (mailed vs. telephone vs. personal interview) for the two age cohorts.

If the pilot study is not completed, HCFA and AHCPR will be unable to determine the feasibility of a large-scale data collection effort in the elderly using a self-administered questionnaire. If the pilot demonstrates that collection of information on health status in the elderly by a self-administered mode is feasible, HHS agencies may use this information for future surveys to collect certain types of health status data on the elderly in an efficient and economical mode.

In order to fulfill the objectives and complete the tasks of the interagency agreement between AHCPR and HCFA, and the contract for the Registry Pilot, the contractor must have individually identifiable records. Since we are proposing to establish this system of records in accordance with the requirements and principles of the Privacy Act, it will not have an unfavorable effect on the privacy or other personal rights of individuals.

The Privacy Act permits us to disclose information without the written consent of the individual for a "routine use." These are disclosures that must be compatible with the purposes for which we collected the information. In all cases, disclosure is never mandatory and must meet stringent scrutiny. The proposed routine uses in the new system meet the compatibility criteria since the information is collected to develop data and data systems to facilitate policy research, to examine the effects of variations in health care practices on patient outcomes, and to develop and disseminate scientific information to improve patient care, as mandated by Congress in 1989 to AHCPR. The disclosures under the routine uses will not result in any unwarranted adverse effects on personal privacy.

Dated: November 4, 1992.

William Toby, Jr.,

Acting Deputy Administrator, Health Care Financing Administration.

09-70-0053

#### SYSTEM NAME:

Medicare Beneficiary Health Status Registry Pilot, HHS/HCFA/ORD.

#### SECURITY CLASSIFICATION:

None.

#### SYSTEM LOCATION:

Data will be maintained at the contractor site and at the Health Care Financing Administration, 6325 Security Boulevard, Baltimore, Maryland 21207-

5187. (Contact system manager for location of computerized records.)

#### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A sample of 2,400 elderly Medicare beneficiaries.

#### CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the system will contain information in the Enrollment Data Base at the time of enrollment, including beneficiary name, address, age, and Social Security and Medicare numbers. The Registry Pilot, in accordance with the Paperwork Reduction Act and 5 CFR part 1320, and submitted for approval by OMB, will be included in the proposed system of records. Information collected through the Registry Pilot will include health and functional status, quality of life, risk factors, past and current medical history, and sociodemographic variables. The file will be linked on a person level with the National Claims History (NCH) File (containing hospitalization and physician visit information) and the new UCDS (containing clinical abstractions from hospitalization records).

#### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

HCFA has independent authority to maintain this system under title XVIII, section 1875, of the Social Security Act.

#### PURPOSE OF THE SYSTEM:

The purpose of the Registry Pilot is to conduct a field experiment to determine the optimal design for the collection of baseline and subsequent information on newly enrolled Medicare beneficiaries and to follow them longitudinally through the aging process until death. The Registry Pilot consists of the information collected through the questionnaire, together with data from NCH and the UCDS, linked at a person level.

#### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Disclosure may be made:

1. To a contractor(s) for the purpose of collating, analyzing, aggregating, or otherwise refining or processing records in the system or for developing, modifying, and/or manipulating ADP software. Data may also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance of an ADP or telecommunications system containing or supporting records in the system. The contractor(s) shall be required to maintain Privacy Act safeguards with respect to such records.

2. To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

3. To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when:

- a. HHS, or any component thereof; or
- b. Any HHS employee in his or her official capacity; or
- c. Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or
- d. The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components;

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that each disclosure is compatible with the purposes for which the records were collected.

Note: We have been advised by the HHS OGC that it is necessary to include this routine use in our systems because agencies occasionally have legitimate need to provide documents to the Justice Department in its role as attorney for agencies in litigation. In this situation, it would not be feasible to obtain the individual's consent to the disclosure for a variety of legal reasons.

4. To an individual or organization for research, evaluation, or epidemiological project related to the prevention of disease or disability or the restoration or maintenance of health, or the efficacy if HCFA:

a. Determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained;

b. Determines that the purpose for which the disclosure is to be made:

- (1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form,
- (2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and
- (3) There is reasonable probability that the objective for the use would be accomplished;

c. Requires the recipient of the information to:

- (1) Establish reasonable administrative, technical, and physical



safeguards to prevent unauthorized use or disclosure of the record, and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient presents an adequate justification of a research or health nature for retaining such information, and

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual, or

(b) For use in another research project, under these same conditions, and with written authorization of HCFA;

(c) For disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit; or

(d) When required by law.

d. Secures a written statement attesting to the information recipient's understanding of and willingness to abide by these provisions.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper and electronic media.

**RETRIEVABILITY:**

Information will be retrieved by beneficiary's name and health insurance claim number.

**SAFEGUARDS:**

Unauthorized persons are denied access to the records area. The contractor will maintain all records in secure storage areas accessible only to authorized employees and will notify all employees having access to records of criminal sanctions for unauthorized disclosure of information on individuals. For computerized records, safeguards established in accordance with guidelines in the HHS Information Resource Manual, Part 6, "Authorized Information System Security" (e.g., security codes, use of passwords), and The National Bureau of Standards Federal Information Processing Standards will be used, limiting access to authorized personnel. Privacy Act requirements will be specifically included in contracts related to this system. The project officer and contract officer will oversee compliance with these requirements. Similar safeguards

will be provided when records are transferred to HCFA Central Office.

**RETENTION AND DISPOSAL:**

Hard copy data collection forms and electronic media with identifiers will be retained in secure storage areas. Identifiers will be removed from computer diskettes. Hard copy records will be destroyed, after the data have been entered into the computer system and verified by edit checks to assure accuracy, within 10 years of completion of the data collection.

**SYSTEM MANAGER(S) AND ADDRESS:**

The responsible agency official (System Manager) is the Director, Office of Research and Demonstrations. The address is the Health Care Financing Administration, Room 2230 Oak Meadows Building, 6325, Security Boulevard, Baltimore, Maryland 21207-5187.

**NOTIFICATION PROCEDURE:**

Inquiries and requests for system records should be addressed to the System Manager at the address indicated above. The requestor must specify name, address, and Health Insurance Claim Number.

**RECORD ACCESS PROCEDURES:**

Same as notification procedures. Requesters should reasonably specify the record contents being sought. These procedures are in accordance with HHS Regulations at 45 CFR 5b.5(a)(2) and 45 CFR 5b.6.

**CONTESTING RECORD PROCEDURES:**

Contact the System manager named above and reasonably identify the record and specify the information to be contested. State the reason for contesting the record (e.g., why it is inaccurate, irrelevant, incomplete, or not current), the corrective action being sought, and give any supporting justification. (These procedures are in accordance with HHS Regulations (45 CFR 5b.7).)

*Note:* Notification, Record Access and Contesting Record Procedures refer only to the *subject individual*.

**RECORD SOURCE CATEGORIES:**

Information contained in these records will be obtained from the Registry Pilot conducted by HCFA's contractor, and from existing HCFA Medicare record systems (e.g., NCH, UCDS).

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. 92-27362 Filed 11-13-92; 8:45 am]

BILLING CODE 4120-03-M

**Privacy Act of 1974; Report of New System**

**AGENCY:** Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

**ACTION:** Notice of new system of records.

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records, "Evaluation of the Medicaid Extension of Eligibility to Certain Low Income Families Not Otherwise Qualified to Receive Medicaid Benefits Demonstration" (No 09-70-0057). We have provided background information about the proposed system in "Supplementary Information" section below. Although the Privacy Act requires only that the "routine uses" portion of the system be published for comment, HCFA invites comments on all portions of this notice. See "Dates" section for comment period.

**DATES:** HCFA filed a new system report with the Chairman of the Committee on Government Operations of the House of Representatives, the Chairman of the Committee on Governmental Affairs of the Senate, and the Acting Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, on November 12, 1992. The new system of record will become effective January 15, 1993, unless HCFA receives comments which would necessitate alterations to the systems. Comments by January 15, 1993.

**ADDRESS:** The public should address comments to Richard DeMeo, HCFA Privacy Act Officer, Office of Budget and Administration, Health Care Financing Administration, Room 2-H-4 East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207-5187. Comments received will be available for inspection at this location.

**FOR FURTHER INFORMATION CONTACT:**

James Hadley, Division of Health Systems and Special Studies, Office of Demonstrations and Evaluations, Office of Research and Demonstrations, Health Care Financing Administration, Room 2-E-5 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207-5187, Telephone (410) 966-6626.

**SUPPLEMENTARY INFORMATION:** HCFA proposes to initiate a new system of records collecting data under the authority of section 4745 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508. The purpose of this system of records is to provide data necessary to evaluate HCFA's Medicaid



Extension of Eligibility to Certain Low Income Families Not Otherwise Qualified to Receive Medicaid Benefits Demonstration. This evaluation will study the effect of projects on access to and cost of health care in Maine (statewide), South Carolina (Horry and Marion Counties), and Washington State (Spokane County). These projects will extend Medicaid coverage to certain low income families not otherwise qualified to receive Medicaid benefits by eliminating the categorical eligibility requirement for Medicaid benefits for these low income individuals.

HCFA will award a contract for an independent evaluation of the impact of these projects. As part of this effort, the contractor will use individually identifiable data to analyze the effects of the demonstration on beneficiary health care costs, access to care, satisfaction with care, and health status. Consequently, the evaluation contractor will establish a system of records that includes individually identifiable data for these purposes. HCFA and the contractor will collect only that information necessary to perform the system's function.

The demonstration projects will operate for 3 years, preceded by a 9-month developmental phase and followed by a 3-month close-out phase. The entire period of the demonstration, including the developmental, operational, and close-out phases, will be from October 1991 to September 1995. The independent evaluation will end approximately 1 year later. The system of records is expected to include data on the number and types of services used by demonstration participants and comparison group members and their experiences in accessing health care, both during and prior to the demonstration period. These data will come from forms used by the demonstration sites to enroll participants, State Medicaid Management Information Systems, a survey of demonstration participant and control group members to be conducted by the evaluation contractor, and other HCFA administrative data as defined by the evaluation contractor.

Samples to conduct analyses will be selected from an estimated number of 24,000 demonstration participants and individuals from comparison sites. In order to fulfill the objectives and complete the tasks of this contract, the contractor must have individually identifiable records. Since we are proposing to establish this system of records in accordance with the requirements and principles of the

Privacy Act, it will not have an unfavorable effect on the privacy or other personal rights of individuals.

The Privacy Act permits us to disclose information without the consent of the individual for "routine use"—that is, disclosure for purposes that are compatible with the purposes for which we collected the information. The proposed routine uses in the new system meet the compatibility criteria since the information is collected for the purpose of administering the Medicaid program for which we are responsible. The disclosures under the routine uses will not result in any unwarranted adverse effects on personal privacy.

Dated: November 5, 1992.

**William Toby, Jr.,**

*Acting Deputy Administrator, Health Care Financing Administration.*

#### **SYSTEM NAME:**

Evaluation of the Medicaid Extension of Eligibility to Certain Low Income Families Not Otherwise Qualified to Receive Medicaid Benefits Demonstration.

#### **SECURITY CLASSIFICATION:**

None.

#### **SYSTEM LOCATIONS:**

The system will be maintained by an evaluation contractor to be selected by HCFA. Contact system manager for the location of the contractor. The system, or portions of the system, may also be transferred to the HCFA Data Center for processing and temporary storage. The address of the Data Center is: Health Care Financing Administration Data Center, Lyon Building, 7131 Rutherford Road, Baltimore, Maryland 21207-51876.

#### **CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals from families with gross annual incomes under 150 percent of the Federal poverty level (and who do not currently qualify for Medicaid benefits) who reside in Maine, South Carolina, and Washington State and who are participating in the demonstration, and individuals selected as comparison group members.

#### **CATEGORIES OF RECORDS IN THE SYSTEM:**

The system will contain information concerning individuals' names, demographic characteristics (e.g., age and sex), employment, health care coverage, utilization and cost of health care services, and responses to survey questions covering access to health care, functional status, and satisfaction with health care services.

#### **AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Section 4745 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508).

#### **PURPOSE(S):**

To provide data necessary to analyze the impact of HCFA's Medicaid Extension of Eligibility to Certain Low Income Families Not Otherwise Qualified to Receive Medicaid Benefits Demonstrations on demonstration participants' access to health care, their use of services, and the cost of the care they receive.

#### **ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Disclosure may be made to:

1. The evaluation contractor, to be selected by HCFA, who will use this information to analyze the impacts of the demonstration. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.
2. A congressional office, from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.
3. The Department of Justice, to a court or other tribunal, or to another party before such tribunal, when:
  - a. The HHS, or any component thereof; or
  - b. Any HHS employee in his or her official capacity; or
  - c. Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or
  - d. The United States or any agency thereof (when HHS determines that the litigation is likely to affect HHS or any of its components);

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that each disclosure is compatible with the purpose for which the records were collected.

4. A contractor for the purpose of collating, analyzing, aggregating, or otherwise refining or processing records in this system, or for developing, modifying, and/or manipulating automated data processing (ADP) software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user



assistance, or maintenance for ADP or telecommunications systems containing or supporting records in the system.

5. To an individual or organization for a research, demonstration, evaluation, or epidemiologic project related to the prevention of disease or disability or the restoration or maintenance of health if HCFA:

a. Determines that use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained;

b. Determines that the research purpose for which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form, and

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) There is reasonable probability that the objective for the use would be accomplished;

c. Requires the recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient presents an adequate justification of a research or health nature for retaining such information, and

(3) Makes no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual, or

(b) For use in another research project, under these same conditions, and with the written authorization of HCFA, or

(c) For disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law:

d. Secures a written statement attesting to the recipient's understanding of a willingness to abide by these provisions.

#### **POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

##### **STORAGE:**

Paper and magnetic media.

##### **RETRIEVABILITY:**

Information will be retrieved by beneficiary's name and Social Security number.

##### **SAFEGUARDS:**

The contractor will maintain all records in secure storage areas accessible only to authorized employees and will notify all employees having access to records of criminal sanctions for unauthorized disclosure of information on individuals. For computerized records, the contractor will initiate ADP system security procedures required by the HHS *Information Resources Manual* (e.g., use of passwords) and the National Institute of Standards and Technology Federal Information Processing Standards. Similar safeguards will be provided if any records are transferred to HCFA Central Office.

##### **RETENTION AND DISPOSAL:**

Hard copy data collection forms and magnetic tapes (or equivalent media) with identifiers will be retained in secure storage areas. Records will be retained for 2 years after the termination of the evaluation contract. The disposal techniques of degaussing will be used to strip magnetic tape (or equivalent media) of identifying names and numbers. Hard copy records with individual identifiers will be destroyed at this time.

##### **SYSTEM MANAGER AND ADDRESS:**

Director, Office of Research and Demonstrations, Health Care Financing Administration, 2230 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207-5187.

##### **NOTIFICATION PROCEDURE:**

Inquiries and requests for system records should be addressed to the system manager at the address indicated above. The requestor must specify the name, address, and Social Security number.

##### **RECORD ACCESS PROCEDURE:**

Same as notification procedures. Requestors should reasonably specify the record contents being sought. These procedures are in accordance with Department regulations (45 CFR 5b.5(a)(2)).

##### **CONTESTING RECORD PROCEDURE:**

Contract the system manager named above and reasonably identify the

record and specify the information to be contested. State the reason for contesting it (e.g., why it is inaccurate, irrelevant, incomplete, or not current). These procedures are in accordance with Department regulations at 45 CFR 5b.7.

##### **RECORD SOURCE CATEGORIES:**

Sources of information contained in this records system are expected to include: forms used by the demonstration sites to enroll participants, State Medicaid Management Information Systems, and a survey of demonstration participant and control group members to be conducted by the evaluation contractor.

##### **SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:**

None.

[FR Doc. 92-27361 Filed 11-13-92; 8:45 am]

BILLING CODE 4120-03-M

#### **Indian Health Service**

#### **Availability of Funds for Loan Repayment Program for Health Professions Educational Loans**

**AGENCY:** Indian Health Service (IHS), PHS, HHS.

**ACTION:** Notice.

**SUMMARY:** The Indian Health Service announces that approximately \$11,000,000 in fiscal year (FY) 1993 funds are available for the repayment of health professions educational loans in return for full-time clinical service in Indian health programs. This program is authorized by Section 108 of Pub. L. 100-713, "Indian Health Care Amendments of 1988," enacted on November 23, 1988. Through this notice, the IHS invites potential applicants to request an application for participation in the Loan Repayment Program. The IHS estimates that approximately 200 loan repayment awards may be made with this funding.

**DATES:** Applications for the FY 1993 cycle of this program will be accepted and evaluated during 3 evaluation and funding cycles. Applicants selected for participation in the FY 1993 program cycle will be expected to begin their service period no later than September 30, 1993. The following application deadlines and award dates are provided below:

Application deadline	Award date
January 10, 1993 .....	February 10, 1993.
April 9, 1993 .....	May 7, 1993.
July 9, 1993 .....	August 6, 1993.



Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or
2. Sent on or before the deadline and received in time for submission to the review panel. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Applications received after the announced closing date will be held for consideration in the next funding cycle.

**FORM TO BE USED FOR APPLICATION:**

Applications will be accepted only if they are submitted on the form entitled "Application for the Indian Health Service Loan Repayment Program," identified with the Office of Management and Budget approval number of OMB #0917-0014.

**ADDRESSES:** Application materials may be obtained by calling or writing to the address below. In addition, completed applications should be returned to: IHS Loan Repayment Program, 12300 Twinbrook Parkway—suite 100, Rockville, MD 20852, telephone (800) 962-2817 (toll-free) or (301) 443-6197 (between 8 a.m. and 5 p.m. (e.s.t.) Monday through Friday, except Federal holidays.)

**FOR FURTHER INFORMATION CONTACT:**

Please address inquiries to Mr. Charles Yepa, LRP Coordinator, IHS Loan Repayment Program, Twinbrook Metro Plaza—suite 100, 12300 Twinbrook Parkway, Rockville, MD 20852, telephone (800) 962-2817 (toll free) or (301) 443-6197 (between 8 a.m. and 5 p.m. (e.s.t.) Monday through Friday, except Federal holidays).

**SUPPLEMENTARY INFORMATION:** Section 108 of the Indian Health Care Improvement Act as amended by Pub. L. 100-713, enacted November 23, 1988, authorizes the IHS Loan Repayment Program and provides in pertinent part as follows:

The Secretary, acting through the Service, shall establish a program to be known as the Indian Health Service Loan Repayment Program (hereinafter referred to as the "Loan Repayment Program") in order to assure an adequate supply of trained physicians, dentists, nurses, nurse practitioners, physician assistants, clinical and counseling psychologists, graduates of schools of public health, graduates of schools of social work, and other health professionals necessary to maintain accreditation of, and provide health care service to Indians through, Indian health programs.

This program is designed to address problems the IHS is facing with regard

to staffing shortages. Only individuals who are or will be in full-time clinical practice in an Indian health program may participate in this program. For the purposes of this program, the term "Indian health program" is defined in Section 108(a)(2)(A), as follows:

\* \* \* any health program or facility funded, in whole or in part, by the IHS for the benefit of American Indians and Alaska Natives and administered:

- a. Directly by the service; or
- b. By any Indian tribe or tribal or Indian organization pursuant to a contract under:
  - (1) The Indian Self-Determination Act; or
  - (2) Section 23 of the Act of April 30, 1988, (25 U.S.C. 47), popularly known as the Buy Indian Act; or
  - (3) By an urban Indian organization pursuant to Title V of Public Law 100-713.

Applicants may sign contractual agreements with the Secretary for (2) or (3) years. The IHS will repay all or a portion of the applicant's health professions educational loans for tuition expenses and reasonable educational and living expenses in amounts up to \$30,000 per year for each year of contracted service.

Participants will be required to fulfill their contract service agreements through full-time clinical practice at a designated priority site. The IHS will designate these sites annually. In general, they are sites characterized by physical, cultural, and professional isolation, and have histories of frequent staff turnover. Sites may be located at IHS facilities or other Indian health program facilities as defined above.

A listing of the priority sites for each health professional will be found in the program application packet. Program participants may match to an appropriate priority site vacancy to complete their obligation.

Nurses, nurse practitioners, and the priority medical specialists all receive up to \$30,000 per year, regardless of their tier site or the length of their contract. Other health professionals will receive up to \$30,000 per year, if they serve at a Tier I site or sign a 3-year contract. Other health professionals who sign a 2-year contract and serve at a Tier II site receive up to \$24,000 per year. Other health professionals who sign a 2-year contract and serve at a Tier III site receive up to \$22,500 per year.

In addition to the above-mentioned payments, in any case where payments under the Loan Repayment Program result in an increase in Federal income liability, the IHS will pay up to 39 percent of the applicant's total eligible payment to the Internal Revenue Service on the applicant's behalf for all or part

of the increased tax liability of the applicant.

Applicants must:

A. Meet one of the following requirements:

1. Be enrolled as a full-time student in the final year of a course of study or program leading to a degree in a health profession in an accredited school in a State. (The term "State" includes, in addition to the several States, only the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau); or

2. Be enrolled in an approved graduate training program in a health profession; or

3. Have a degree in medicine, osteopathy, dentistry, or other health profession; and have completed an approved graduate training program in medicine, osteopathy, dentistry, or other health profession in a State, and have a license to practice medicine, osteopathy, dentistry, or if applicable other health profession in a State, except that the Secretary may waive the requirement of graduate training for good cause shown; and

B. Be eligible for, or hold an appointment as a Commissioned Officer in the Regular or Reserve Corps of the Public Health Service, or meet the professional standards for civil service employment in the IHS or be employed in an Indian health program without service obligation; and

C. Submit an application to participate in the Loan Repayment Program; and

D. Sign and submit to the Secretary, at the time of the submission of such application, a written contract agreeing to accept repayment of educational loans and to serve for the applicable period of obligated service in a priority site as determined by the Secretary; and

E. Sign an affidavit attesting to the fact that they have been informed of the relative merits of the U.S. Public Health Service Commissioned Corps and the Civil Service as employment options.

Upon arrival of the applicant for participation in the Loan Repayment Program, his/her application will be referred to appropriate recruiters to facilitate the applicant's locating an acceptable position.

The IHS has developed lists of Tier sites, which include all Indian Health programs, as defined in Section 108(a)(2)(A). These sites have been separated into three tiers as a means of



defining their relative need and priority. The tiers have the following meanings:

**Tier I:** The most difficult to recruit for sites and specialties. The sites are characterized by geographic, professional and cultural isolation and rapid staff turnover. Positions in the priority medical specialties are designated as Tier I, irrespective of location.

**Tier II:** Somewhat less difficult to recruit for sites. The isolation and turnover factors less severe than for Tier I sites.

**Tier III:** All sites not designated as Tier I or Tier II.

Funds will be available for both practicing physicians and medical residents. Medical residents, physicians, and other health professionals are subject to the following priorities.

Within each of the following priorities, after positions are ranked in each Indian Health Program for which there is a need or vacancy and those positions are ranked in order of priority, preference is given to American Indian and Alaska native applicants and applicants recruited through the efforts of Indian tribes or tribal or Indian organizations.

- The first priority for funding is given to the physician practitioners/resident physicians of Priority Specialties who match to any tier site. Priority Specialties include: Anesthesiology, Emergency Room Medicine, General Surgery, Otolaryngology/Otorhinolaryngology, Obstetrics/Gynecology, Ophthalmology, Orthopedic Surgery, Psychiatry and Radiology.

- After Priority Specialties are selected, physicians/resident physicians, nurses and other health professionals who match to Tier I sites receive priority.

- Next in priority, after Priority Specialties and Tier I physicians/resident physicians, nurses and other health professionals are selected, are physicians/resident physicians, nurses and other health professionals who agree to serve at Tier II sites.

- Last in priority, after Priority Specialties and physicians, nurses and other health professionals who agree to serve at Tier I and II sites, are physicians, nurses and other health professionals who agree to serve at Tier III sites.

Other factors may be applied when determining which applicant is selected, within any of the above priorities applied to applicants. The following list of these factors are equal in weight when applied, and are applied when all other criteria are equal and a selection

must be made between applicants. One or all of the following factors may be applicable to an applicant, and the applicant who has the most of these factors, all other criteria equal, would be selected.

- An applicant's length of current employment in the IHS, tribal or urban program.

- An applicant's agreement to serve for 3 years under the IHS Loan Repayment Program contract, as opposed to 2 years.

- For physician applicants, board certification by the start of their service.

- An applicant who has been a former IHS, tribal or urban program employee, with experience in a Tier I site.

- An applicant who has been a former National Health Service Corps (NHSC) or IHS Scholarship Program participant who has completed or will complete his or her service obligation with his or her respective agency before September 30 or the applicable fiscal year; and who has experience in an IHS, tribal or urban site.

- An applicant's experience in a post-residence practice in a primary care Health Professional Shortage Area (HPSA) or Health Professional Shortage Area Placement Opportunity List (HPOL) site.

- Availability for service earlier than other applicants (first come, first served); and

- The quality of references from persons having direct knowledge of the applicant's professional capability.

- Date the individual's application was received.

Any individual who enters this program and satisfactorily completes his or her obligated period of service may, if funds are available, apply to extend the contract on a year-by-year or multi-year basis, as determined by the IHS, at the up to \$30,000 per year rate. The maximum amount to be funded in this manner may not exceed the total of the individual's outstanding qualified educational loans.

Any individual who owes an obligation for health professional service to the Federal Government or to a State or other entity under an agreement with such State or other entity is not eligible for the Loan Repayment Program unless such an obligation will be completely satisfied prior to the beginning of service under this program in the year that an application is made for this program:

This program is not subject to review under Executive Order 12372.

The Catalog of Federal Domestic Assistance number is 13.164.

Dated: September 30, 1992.

Michel E. Lincoln,

Deputy Director.

[FR Doc. 92-27596 Filed 11-13-92; 8:45 am]

BILLING CODE 4160-16-M

## National Institutes of Health

### Notice of Meeting and Request for Comments or Testimony

Notice is hereby given that the Blue Ribbon Panel on Envisioning the Future of the National Institute of Dental Research Intramural Research Program will hold two public meetings: one on January 27, 1993 in Conference Room 9, Bldg. 31, NIH, 9000 Rockville Pike, Bethesda, Maryland; and the second on January 29, 1993 in Conference Room 8, Bldg. 31, NIH. The Panel is an ad hoc group of consultants to the National Advisory Dental Research Council, National Institute of Dental Research (NIDR). The purpose of the panel is to assess future opportunities and challenges in science, training and partnerships for the Intramural Research Program (IRP) of the NIDR.

The January 27 meeting will be from 9:30 a.m. to 5 p.m. to hear comments on the questions outlined in this document.

The January 29 meeting will be held from 1:30 p.m. until adjournment, to communicate the Panel's recommendations and to allow members of the public to respond.

The Panel was created by The National Advisory Dental Research Council, NIDR. At its September 14, 1992 meeting, the Council called for its establishment and requested a report and recommendations by June of 1993 on a series of questions concerning future opportunities and challenges in science, training, and partnerships for the IRP. The Panel is composed of approximately 12 members who are expert in a broad variety of specialties within biomedical research and administration, including oral biology, biochemistry, molecular biology, and craniofacial research, and other clinical oral health research.

To assure maximum public participation, the Panel encourages either public testimony at the meeting or written public comments to be submitted prior to the meeting. Testimony or written comments should be restricted to the questions before the Panel that are listed in the following section of this notice.

Testimony at the January 27th meeting should be no more than 10 minutes in length. Speakers should submit in writing their intention to make a



presentation, accompanied by a one-page summary of the presentation, by December 18, 1992. Copies of the actual testimony should be provided to the Panel at least one week prior to the meeting to allow for distribution to Panel members.

Written public comments, limited to no more than 5 double-spaced pages, are welcome in advance of the meeting and must be received by December 18, 1992.

Both written comments and written requests to deliver testimony should be sent by the December 18 deadline to: Mr. Brent Jaquet, Chief, Office of Planning, Evaluation and Communications, NIDR, Room 2C34, Building 31, 9000 Rockville Pike, Bethesda, Maryland 20892, phone 301-496-6705, fax 301-496-9988. Members of the public who wish to attend the meeting must register; they also should direct their correspondence to Mr. Jaquet by Dec. 18.

#### Background

The NIDR Intramural Research Program (IRP) is recognized as one of the premier dental research institutions in the world. To a large degree, basic and clinical studies carried out in the IRP form the basis for new directions in the dental and oral health sciences.

Now in its 44th year, the IRP conducts research in a wide range of basic and clinical sciences. The current IRP budget is approximately \$22 million. Its broad research portfolio is organized into eight major laboratories and branches: The Bone Research Branch; the Clinical Investigations and Patient Care Branch; the Laboratory of Cellular Development and Oncology; the Laboratory of Developmental Biology; the Laboratory of Immunology; the Laboratory of Microbial Ecology; the Laboratory of Oral Medicine; and the Neurobiology and Anesthesiology Branch.

#### Rationale for Establishing a Blue Ribbon Panel

As change continually sweeps through biomedical and behavioral research at the National Institutes of Health, every Institute must harness its particular talents to respond creatively to emerging scientific and public health issues. The NIH Strategic Planning Process has demonstrated the importance of critical introspection. As part of this process of reflection and renewal, NIDR—through its Intramural Research Program—must be positioned to project a vision for dental, oral and craniofacial research into the next century.

Recent technological advances in the biomedical sciences and their

application to diagnosis, prevention and treatment of dental, oral and craniofacial diseases offer an important opportunity to move the IRP into new and exciting directions.

#### Charge

The Panel is charged with assessing the future opportunities and challenges for the Intramural Research Program (IRP). To accomplish this, the Panel will address challenges to the IRP in the context of its mission, its relationship with the Institute's directions and its position in the larger NIH intramural environment. The mission and the future focus of IRP research as a whole will be viewed in light of the needs of the various communities which it serves, and the public health needs expected in the future.

The effort will be structured to examine a variety of issues in three broad categories: Science, training of researchers, and partnerships with other research organizations. The Panel will help define a new vision for the future and criteria for organization and management to meet that vision. Operating assumptions for this activity are that NIH funding levels for intramural research will remain relatively stable over the next 10 years and the overall research excellence will continue to be fostered and maintained.

#### Questions

The specific questions to be addressed by the Panel and by public commenters are:

#### Vision

- What should be the vision for IRP research—a vision which serves the overall mission of the NIDR and continues to build on its Long Range Research Plan for the 1990's? (This milestone document was prepared by NIDR in 1990 and describes the increasing breadth and sophistication of dental research and its directions for the 1990's.)

#### Science

- What are the major research opportunities for the IRP in the coming decade, and how can the IRP best respond to the important dental, oral and craniofacial diseases?
- In what areas should the IRP make important contributions to the basic biological sciences, to biomedicine, and to overall scientific advances at NIH?
- How can the IRP best mobilize to pursue high-risk, innovative research that responds to new challenges in the basic and oral health sciences?

- How can the IRP nurture the basic science to clinical research continuum so essential for maximum oral health benefit, and what should be the distribution of basic and clinical research?

#### Training of Researchers

- How can the IRP attract the most excellent candidates for research training, including women and racial and ethnic minorities?
- How can the IRP enhance its role in training basic and clinical scientists who will be able to address oral health problems?
- How can the IRP strengthen its collaborative training opportunities with federal and non-federal research institutions, including dental research institutions? Are new mechanisms needed?

#### Partnerships With Other Research Organizations

- How can the IRP capitalize upon collaborations and partnerships with researchers supported by the NIDR Extramural Program, the NIDR Epidemiology and Oral Disease Prevention Program, within NIDR, and with other NIH Institutes and non-federal research institutions in the oral and general health sciences? How should such interactions be enhanced to assure that new developments in science and technology are transferred as soon as possible into patient care?

#### Organization and Management

- Are there new organization and management opportunities that should be considered for the IRP?
- Those members of the public who are interested in providing their views to the Panel should restrict their comments to the specific questions outlined above.

#### Further Information

For further information, please contact: Mr. Brent Jaquet, Chief, Office of Planning, Evaluation and Communications, NIDR, room 2C34, Building 31, 9000 Rockville Pike, Bethesda, Maryland 20892, phone 301-496-6705, fax 301-496-9988.

Dated: November 6, 1992.

Bernadine Healy,

Director, NIH.

[FR Doc. 92-27626 Filed 11-13-92; 8:45 am]

BILLING CODE 4140-01-M



**National Institutes of Health; National Institute of Allergy and Infectious Diseases**

**Basic Sciences I Subcommittee of the Acquired Immunodeficiency Syndrome Research Review Committee; Meeting**

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Basic Sciences I Subcommittee of the Acquired Immunodeficiency Syndrome Research Review Committee, National Institute of Allergy and Infectious Diseases, on December 16, 1992, at the Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Bethesda, MD 20815.

The meeting will be open to the public from 8:30 a.m. to 9 a.m. on December 16 to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9 a.m. until adjournment on December 16. These applications, proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, room 7A32, National Institutes of Health, Bethesda, MD 20892, telephone (301) 496-5717, will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Madelon Halula, Scientific Review Administrator, Basic Sciences I Subcommittee of the Acquired Immunodeficiency Syndrome Research Review Committee, NIAID, NIH, Solar Building, room 4A25, Rockville, MD 20892, telephone (303) 402-2636, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: November 4, 1992.

Susan K. Feldman,

*Committee Management Officer, NIH.*

[FR Doc. 92-27632 Filed 11-13-92; 8:45 am]

BILLING CODE 4140-01-M

**National Institutes of Health; National Cancer Institute**

**Meeting of the Board of Scientific Counselors, Division of Cancer Biology, Diagnosis, and Centers**

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Biology, Diagnosis, and Centers, National Cancer Institute, November 30-December 1, 1992. The meeting will be held in Building 31C, conference room 6, National Institutes of Health, Bethesda, MD 20892.

This meeting will be open to the public on November 30 from 8:30 a.m. to 1 p.m. and on December 1 from 11:45 a.m. to adjournment for the review of the Extramural Research Program, the Centers, Training, and Resources Program and for concept review of proposed research projects. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sec. 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92-463, the meeting will be closed to the public on November 30 from 1:15 p.m. until approximately 5:30 p.m.; and on December 1 from 8:30 a.m. to 11:45 a.m. for the review and discussion of previous site visit reports and responses, including consideration of personnel qualifications and performance, the competence of individual investigators, medical files of individual research subjects, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Office, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, MD 20892 (301 496-5708) will provide summary minutes of the meeting and roster of committee members.

Dr. Ihor J. Masnyk, Deputy Director, Division of Cancer Biology, Diagnosis, and Centers, National Cancer Institute, Building 31, room 3A03, National Institutes of Health, Bethesda, MD 20892 (301) 496-3251 will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: November 4, 1992.

Susan K. Feldman,

*Committee Management Officer, NIH.*

[FR Doc. 92-27631 Filed 11-13-92; 8:45 am]

BILLING CODE 4140-01-M

**National Institute of Dental Research; Meeting of NIDR Board of Scientific Counselors**

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Dental Research (NIDR), on December 2-3, 1992, in the H. Trendley Dean Conference Room, Building 30, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public from 8:30 a.m. to recess on December 2. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92-463, the meeting will be closed to the public from 8:30 a.m. until adjournment on December 3 for the review, discussion, and evaluation of individual programs and projects conducted by the NIDR, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Stephan Mergenhagen, Acting Director of Intramural Research, NIDR, NIH, Building 30, room 132, Bethesda, Maryland 20892 (telephone 301-496-1483) will provide a summary of the meeting, roster of committee members and substantive program information.

Dated: November 4, 1992.

Susan K. Feldman,

*Committee Management Officer, NIH.*

[FR Doc. 92-27629 Filed 11-13-92; 8:45 am]

BILLING CODE 4140-01-M

**National Heart, Lung, and Blood Institute; Meeting of Board of Scientific Counselors**

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Heart, Lung, and Blood Institute on December 10 and 11, 1992, National Institutes of Health, 9000 Rockville Pike, Building 10, room 7C101, Bethesda, Maryland 20892.

This meeting will be open to the public from 9 a.m. to 5 p.m. on December 10 and from 9 a.m. to 1 p.m. on December 11 for discussion of the general trends in research relating to



cardiovascular, pulmonary and certain hematologic diseases. Attendance by the public will be limited to space available.

In accordance with the provision set forth in sec. 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92-463, the meeting will be closed to the public from 1 p.m. to adjournment on December 11, 1992 for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496-4236, will provide a summary of the meeting and a roster of the Board members.

Substantive program information may be obtained from Dr. Edward D. Korn, Executive Secretary and Director, Division of Intramural Research, NHLBI, NIH, Building 10, room 7N214, phone (301) 496-2116.

Dated: November 4, 1992.

Susan K. Feldman,

*Committee Management Officer, NIH.*

[FR Doc. 92-27628 Filed 11-13-92; 8:45 am]

BILLING CODE 4140-01-M

#### **National Heart, Lung, and Blood Institute; Notice of Meeting of Heart, Lung, and Blood Research Review Committee B**

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee B, National Heart, Lung, and Blood Institute, National Institutes of Health, on December 3, 1992 in Building 31, Conference Room 9, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on December 3, from 8 a.m. to approximately 9 a.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(4) and (c)(6), title 5, U.S.C., and section 10(d) of Public Law 92-463, the meeting will be closed to the public on December 3 from

approximately 9 a.m. to 4 p.m. for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236 will provide a summary of the meeting and a roster of the committee members.

Dr. Jeffrey H. Hurst, Scientific Review Administrator, Heart, Lung, and Blood Research Review Committee B, Westwood Building, room 555, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4485, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research, National Institutes of Health)

Dated: November 4, 1992.

Susan K. Feldman,

*Committee Management Officer, NIH.*

[FR Doc. 92-27630 Filed 11-13-92; 8:45 am]

BILLING CODE 4140-01-M

#### **National Heart, Lung, and Blood Institute; Meeting of Heart, Lung, and Blood Research Review Committee A**

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee A, National Heart, Lung, and Blood Institute, National Institutes of Health, on December 3 and 4, 1992, in Building 31, Conference Room 7, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on December 3, from 8 a.m. to approximately 9 a.m., to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C., and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public on December 3, from approximately 9 a.m. until recess, and from 9 a.m. until adjournment on December 4, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential

trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A-21, National Institutes of Health, Bethesda, Maryland 20892, 301-496-4236, will provide a summary of the meeting and a roster of the committee members.

Dr. Jon Ranhand, Scientific Review Administrator (Acting), Heart, Lung, and Blood Research Review Committee A, Westwood Building, room 554, National Institutes of Health, Bethesda, Maryland 20892, 301-496-7265, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; National Institutes of Health)

Dated: November 4, 1992.

Susan K. Feldman,

*Committee Management Officer, NIH.*

[FR Doc. 92-27627 Filed 11-13-92; 8:45 am]

BILLING CODE 4140-01-M

#### **Public Health Service**

##### **Redesignation of Contract Health Service Delivery Area**

**AGENCY:** Indian Health Service, HHS.

**ACTION:** Notice with request for comments.

**SUMMARY:** This notice advises the public that the Indian Health Service (IHS) proposes to redesignate the geographic boundaries of the Contract Health Service Delivery Area (CHSDA) for the Grand Traverse Band of Ottawa and Chippewa Indians ("The Band"). The Grand Traverse CHSDA currently is comprised of Leelanau County in Michigan. This county was designated as the Band's CHSDA when the IHS published its updated list of CHSDAs in the *Federal Register* of January 10, 1984 (49 FR 1291). It is proposed that the redesignated CHSDA be comprised of six counties in the State of Michigan, i.e., Leelanau, Antrim, Benzie, Grand Traverse, Manistee, and Charlevoix. This notice is issued under authority of 43 FR 34654, August 4, 1978.

**DATES:** Comments must be received on or before December 16, 1992.

**ADDRESSES:** Comments may be mailed to Betty J. Penn, Regulations Officer, Indian Health Service, room 6-34, 5600 Fishers Lane, Rockville, Maryland 20857.



Comments will be made available for public inspection at this address from 8:30 a.m. to 5 p.m., Monday–Friday, beginning approximately 2 weeks after publication of this notice.

**FOR FURTHER INFORMATION CONTACT:**

Leslie M. Morris, Deputy Director, Division of Legislation and Regulations, Office of Planning, Evaluation and Legislation, Indian Health Service, room 6-34, 5600 Fishers Lane, Rockville, MD 20857, telephone 301-443-1116. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** The Secretary of the Interior acknowledged the Band as an Indian tribe, effective May 27, 1980 (45 FR 19321). The Band contracts with the IHS under the Indian Self-Determination Act (Pub. L. 93-638, as amended) to provide direct services at a clinic facility and also to provide, for eligible Indians, services purchased from private sector health care providers. Such purchased services are called "contract health services."

On August 4, 1978, the IHS published regulations establishing eligibility criteria for receipt of contract health services and for the designation of CHSDAs (43 FR 34654, codified at 42 CFR 36.22, last published in the 1986 version of the Code of Federal Regulations). On September 16, 1987, the IHS published new regulations governing eligibility for IHS services. Congress has repeatedly delayed implementation of the new regulations by imposing annual moratoriums. Section 719(a) of the Indian Health Care Amendments of 1988, Public Law 100-713, explicitly provides that during the period of the moratorium placed on implementation of the new eligibility regulations, the IHS will provide services pursuant to the criteria in effect on September 15, 1987. Thus, the IHS contract health services program continues to be governed by the regulations contained in the 1986 edition of the Code of Federal Regulations in effect on September 15, 1987. See 42 CFR 36.21 *et seq.* (1986).

As applicable to the Band, these regulations provide that, unless otherwise designated, a CHSDA shall consist of a county which includes all or part of a reservation and any county or counties which have a common boundary with the reservation (42 CFR 36.22(a)(6) (1986)). The regulations also provide that after consultation with the tribal governing body or bodies of those reservations included in the CHSDA, the Secretary may, from time to time, redesignate areas with the United States for inclusion or exclusion from a CHSDA. The regulations require that certain criteria must be considered

before any redesignation is made. The criteria are as follows:

- (1) The number of Indians residing in the area proposed to be so included or excluded;
- (2) Whether the tribal governing body has determined that Indians residing in the area near the reservation are socially and economically affiliated with the tribe;
- (3) The geographic proximity to the reservation of the area whose inclusion or exclusion is being considered; and
- (4) The level of funding which would be available for the provision of contract health services.

Additionally, the regulations require that any redesignation of a CHSDA must be made in accordance with the procedures of the Administrative Procedure Act (5 U.S.C. 553). In compliance with this requirement, we are publishing this proposal and requesting public comment.

Since approximately 1981, the Band has been providing contract health services to its tribal members residing in the proposed five-county area consisting of Antrim, Benzie, Grand Traverse, Leelanau, and Manistee Counties of Michigan. Under existing regulations, the CHSDA for the Band consists of only Leelanau County. On November 8, 1990, the Band requested the Secretary to redesignate its CHSDA as a six-county area, including Charlevoix County in Michigan. The Band based its request on the fact that the Department of the Interior, through the Bureau of Indian Affairs, has designated a tribal service area for the Band to include these six counties. We agree with the tribe's proposal for a six-county CHSDA.

In applying the aforementioned CHSDA redesignation criteria required by operative regulations (43 FR 35654), the following findings are made:

- (1) The Band's enrollment records show that there are 100 tribal members residing in Charlevoix County. It is estimated that approximately 20 members of other federally recognized tribes also reside within that county. While 1980 U.S. Census data indicates that there are more than 120 Indians in Charlevoix County, the others are either not federally recognized or do not have close social and economic ties to the Band and are, therefore, not eligible for contract health services under existing law.
- (2) The Band has determined that contract health services would be available to all of its members and to all federally recognized Indians in Charlevoix County having social and economic affiliation with the Band.

(3) Although the Band's reservation is in Leelanau County, Charlevoix County borders Antrim County in its current service area and shares a water boundary with Leelanau County. The traditional lands of the Band are within the six counties surrounding and adjacent to the Grand Traverse Bay of Lake Michigan.

(4) It is estimated that the current eligible contract health service population will be increased by 120 individuals, changing the active patient population from 913 to 1,033, assuming 100 percent utilization for Charlevoix County eligibles. Based upon data from the 1990 application of the health services priority system and the modified resource requirements methodology, the total clinical work units (CWUs) generated by the user population of 913 was 6,790, or 7.4 per individual. Assuming the same utilization, the 120 new users will generate an additional 888 CWUs. The calculated cost per CWU in the inpatient and ambulatory care category, which includes contract health care costs, was \$59.87 for the Band. Therefore, potential added costs for contract health services resulting from new users is approximated at  $\$59.87 \times 888 = \$53,165$ . Total resources available to the program in 1990 were \$1,058,000 with total resources needed of \$1,077,000, resulting in a 98-percent level of need funded. Addition of \$53,165 to total resources needed results in an increase to \$1,130,165 and a 94-percent level of need funded. The increase in unmet need from 2 percent to 6 percent would not be expected to result in an increase in funding for the Band. The impact on existing contract health services will not be substantial, although medical priorities for service may have to be imposed if resources become insufficient to meet the total demand for health care. The current level of need funded of 94 percent will allow sufficient flexibility to assure that there will be no significant reduction in the level of contract health services to current CHSDA residents, so the designation of the six-county CHSDA is within available resources.

Accordingly, after considering the Band's request in light of the criteria specified in the regulations, I am proposing to redesignate the CHSDA of the Band to consist of Leelanau, Antrim, Benzie, Grand Traverse, Manistee, and Charlevoix Counties of Michigan.

This notice does not contain reporting or recordkeeping requirements subject to prior approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980.



Dated September 30, 1992.

Michel E. Lincoln,  
Deputy Director.

[FR Doc. 92-27598 Filed 11-13-92; 8:45 am]

BILLING CODE 4160-16-M

## Social Security Administration

### Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services covers the Social Security Administration. Notice is given that Chapter S1, the Office of the Deputy Commissioner for Finance, Assessment and Management is being amended to reflect the change in the title and the deletion of several functional statements for the Division of Data Management and Matching Operations (S1KB2), Office of Assistance Program Quality (S1KB) in the Office of Program and Integrity Reviews (S1K).

The changes are as follows:

#### Section S1K.10 The Office of Program and Integrity Reviews—(Organization)

E. The Office of Assistance Program Quality (S1KB).

Retitle:

2. The Division of Data Management and Matching Operations (S1KB2) to the Division of Data Management (S1KB2).

#### Section S1K.20 The Office of Program and Integrity Reviews—(Functions)

E. The Office of Assistance Program Quality (S1KB).

Delete:

The last three sentences of the paragraph starting with "The Office oversees of SSA's computer. . . ."

Retitle:

2. The Division of Data Management and Matching Operations (S1KB2) to the Division of Data Management (S1KB2).

Delete:

"f" through "h."

Dated: November 3, 1992.

Ruth A. Pierce,

Deputy Commissioner for Human Resources.

[FR Doc. 92-27677 Filed 11-13-92; 8:45 am]

BILLING CODE 4190-29-M

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

#### Exxon Valdez Oil Spill Public Advisory Group; Meeting

AGENCY: Office of the Secretary, Interior.

#### ACTION: Notice of meeting.

**SUMMARY:** The Department of the Interior announces a public meeting of the Exxon Valdez Oil Spill Public Advisory Group to be held on December 2, 1992, at 9:30 a.m., in the first floor conference room, 645 "C" Street, Anchorage, Alaska.

#### FOR FURTHER INFORMATION CONTACT:

Douglas Mutter, Department of the Interior, Office of Environmental Affairs, 1689 "C" Street, suite 119, Anchorage, Alaska (907) 271-5011.

**SUPPLEMENTARY INFORMATION:** The Public Advisory Group was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America v. State of Alaska*, Civil Action No. A91-081 CV. This meeting will include: (1) The election of officers; (2) a discussion of operating procedures; (3) a review of draft restoration plan materials; and (4) a discussion and recommendations for the 1993 restoration work plan.

Dated: November 9, 1992.

Jonathan P. Deason,

Director, Office of Environmental Affairs.

[FR Doc. 92-27709 Filed 11-13-92; 8:45 am]

BILLING CODE 4310-RG-M

### Bureau of Land Management

[AK-967-4230-15; AA-10468]

#### Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sec. 14(h)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(1), will be issued to Sealaska Corp. for approximately 11.8 acres. The lands involved are in the vicinity of Craig, AK.

T. 69 S., R. 80 E., Copper River Meridian, AK

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Juneau Empire. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, AK 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation,

shall have until December 16, 1992, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Terry R. Hassett,

Chief, Branch of KCS Adjudication.

[FR Doc. 92-27646 Filed 11-13-92; 8:45 am]

BILLING CODE 4310-JA-M

[AK-964-4230-01; F-14956-A2 and F-14956-B2]

#### Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to White Mountain Native Corp. for approximately 12,727 acres. The lands involved are in the vicinity of White Mountain, AK, within Tps. 10 S., Rs. 25 and 26 W., and T. 11 S., R. 25 W., Kateel River Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Nome Nugget. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, AK 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until December 16, 1992, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Carolyn A. Bailey,

Lead Land Law Examiner, Branch of Doyon/Northwest Adjudication.

[FR Doc. 92-27599 Filed 11-13-92; 8:45 am]

BILLING CODE 4310-JA-M



[WY-920-03-4120-03]

**Competition Coal Lease Sale; West Rocky Butte Tract, Campbell County, Wyoming; Correction****AGENCY:** Bureau of Land Management, Interior, Wyoming.**ACTION:** Notice of correction of legal description.

**SUMMARY:** This notice corrects an error in the legal description for a Notice of Competitive Coal Lease Sale for West Rocky Butte Tract, WYW122586, which appeared in the *Federal Register* on October 30, 1992, (57 FR 49187). The legal description in the Notice of Competitive Coal Lease Sale reads:

T. 48 N., R. 71 W., 6th P.M., Wyoming  
 Sec. 5: Lots 7 thru 9, 16 and 17;  
 Sec. 6: Lots 8, 14 (E2), 15, 16 and 23 (E2);  
 Sec. 7: Lot 5 (E2);  
 Sec. 8: Lot 4;

T. 48., R. 71 W., 6th P.M., Wyoming  
 Sec. 32: Lot 15.

Containing 463.205 acres.

The legal description in the Notice of Competitive Coal Lease Sale should read:

T. 48 N., R. 71 W., 6th P.M., Wyoming  
 Sec. 5: Lots 7 thru 9, 16 and 17;  
 Sec. 6: Lots 8, 14 (E2), 15, 16 and 23 (E2);  
 Sec. 7: Lot 5 (E2);  
 Sec. 8: Lot 4;

T. 49 N., R. 71 W., 6th P.M., Wyoming  
 Sec. 32: Lot 15.

Containing 463.205 acres.

The balance of the Notice of Competitive Coal Lease Sale, West Rocky Butte Tract, WYW122586, remains unchanged.

Lynn E. Rust,  
*Chief, Branch of Mining Law & Solid Minerals.*

[FR Doc. 92-27720 Filed 11-13-92; 8:45 am]

BILLING CODE 4310-22-M

[CA-060-5101-10-B029, CACA 29620]

**Notice of Availability of Morongo Basin Pipeline Project Environmental Assessment****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of availability.

**SUMMARY:** In accordance with section 202 of the National Environmental Policy Act of 1969, the Bureau of Land Management, California Desert District, has prepared an Environmental Assessment (EA) for the Mojave Water Agency's proposed Morongo Basin Pipeline Project. This EA describes and analyzes the proposed Project and project alternatives, including the "no action" option. Furthermore, the

proposed action, if approved, will involve an amendment to the California Desert Conservation Area Plan. This Project will traverse both Federal and private lands in San Bernardino County, California.

**DATES:** Written comments will be accepted until December 15, 1992. Any comments received by the close of the comment period will be evaluated and those letters that identify issues, where clarification or discussion is required, will be addressed in our Decision Record (DR). Copies of this DR will be provided to any person or agency commenting, or to other interested parties, upon written request. In addition, the resource management planning process includes an opportunity for administrative review through a plan protest to the BLM Director. Only those persons or organizations who participated in our planning process leading to this proposed plan exception may protest. The protest period extends for 30 days from the date of publication of this notice and the procedures to be followed are fully described in chapter V of this EA.

**ADDRESSES:** Written comments should be sent to the District Manager, Bureau of Land Management, 6221 Box Springs Blvd., Riverside, CA 92507-0714, ATTN: Morongo Basin Pipeline Project.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Johnson, Special Projects Manager, California Desert District Office, 6221 Box Springs Blvd., Riverside, CA 92507-0714; phone (714) 697-5234.

**SUPPLEMENTARY INFORMATION:** Over the past 20 years, data has been published demonstrating an extreme overdraft of the Warren Basin, the primary source of domestic water supplies for what is now the Town of Yucca Valley, California. The Mojave Water Agency (MWA), as the water wholesaler for this area, has included the Morongo Basin as a potential customer for a portion of its allocation of State Project Water delivered to the region in the California Water Aqueduct which terminates at Lake Silverwood on the north side of the San Bernardino Mountains. The Morongo Basin Pipeline is a water infrastructure facility that is essential to the future of survival of the Town of Yucca Valley and immediate surrounding area which depends on the Warren Basin. Other water purveyors in the region will participate in funding this pipeline for delivery of State Project Water (SPW) which can reduce existing or potential overdraft conditions with the ground water subbasins (Joshua Tree, Reche, and Giant Rock) that are

served by these water purveyors. Without a supplemental water supply that will be provided by the proposed Morongo Basin Pipeline, the existing overdraft in the Warren Basin is forecast to deplete the local aquifer with ten years.

The EA for the proposed Morongo Pipeline Project includes an analysis of the environmental impacts of the proposed pipeline system during construction and operation. This EA has been completed in accordance with the National Environmental Policy Act of 1969 (NEPA) and the Council on Environmental Qualities's regulations for implementing NEPA. Based on the issues and concerns identified, this EA focuses on impacts to geology, geologic hazards; surface runoff, flood hazards; biological resources; cultural, paleontologic resources; water supply, water quality; utilities, infrastructure; transportation, circulation; and alternatives. Alternatives addressed in this EA focus on project alternatives, including different pipeline routes, and the "no project" option. Furthermore, to make this proposed pipeline conform to the Bureau of Land Management's California Desert Conservation Area (CDCA) Plan, either a Plan Amendment to bring forward Contingent Corridor "S" as a designated Utility Corridor, or to approve an exception for the proposed Morongo Basin Pipeline Project is necessary. Because this proposed pipeline constitutes the only known near-term demand to activate Contingent Corridor "S" the Bureau has determined that an exception to the CDCA Plan is the preferred method of processing this application. Procedurally, the exception, proposed for this project will be treated the same as a CDCA Plan Amendment through this EA.

Robert M. Waiwood,  
*Acting District Manager.*

[FR Doc. 92-27719 Filed 11-13-92; 8:45 am]

BILLING CODE 4310-40-M

[NV-930-03-4210-04; N-56458]

**Exchange of Public Lands in Clark County, NV; Realty Action**

The following described public lands in Las Vegas, Clark County, NV are being considered for disposal by exchange pursuant to Sections 206 and 209 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

**Mount Diablo Meridian, NV**

T. 20 S., R. 60 E.,  
 Sec. 5, Lot 1.



T. 20 S., R. 60 E.,

Sec. 8: NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ , N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$  SW $\frac{1}{4}$ , S $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$  SW $\frac{1}{4}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ , NW $\frac{1}{4}$  NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ , NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ , W $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ , SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$  SE $\frac{1}{4}$ , N $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$  NE $\frac{1}{4}$ SE $\frac{1}{4}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ , SW $\frac{1}{4}$  SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ , SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ , NE $\frac{1}{4}$  NW $\frac{1}{4}$ SE $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ , N $\frac{1}{2}$  SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ , SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ , SW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  SE $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$  SW $\frac{1}{4}$ SE $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$  SE $\frac{1}{4}$ SE $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ .

T. 20 S., R. 60 E.,

Sec. 9: S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$  SE $\frac{1}{4}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$  SE $\frac{1}{4}$ SE $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ , SW $\frac{1}{4}$ , SE $\frac{1}{4}$  SE $\frac{1}{4}$ SE $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ , S $\frac{1}{2}$  SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ , S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ , W $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ , NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  SE $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$  SW $\frac{1}{4}$ SE $\frac{1}{4}$ , SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ , NE $\frac{1}{4}$  SE $\frac{1}{4}$ SW $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ , N $\frac{1}{2}$  SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ , SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ , SW $\frac{1}{4}$ SW $\frac{1}{4}$  SW $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ SE $\frac{1}{4}$  SW $\frac{1}{4}$ SW $\frac{1}{4}$ .

T. 21 S., R. 60 E.,

Sec. 11: SW $\frac{1}{4}$ SW $\frac{1}{4}$ .

T. 22 S., R. 61 E.,

Sec. 14: W $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ , SW $\frac{1}{4}$  NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ ME $\frac{1}{4}$ , E $\frac{1}{2}$ NW $\frac{1}{4}$  NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ NE $\frac{1}{4}$  SW $\frac{1}{4}$ NE $\frac{1}{4}$ , N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$  SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  NE $\frac{1}{4}$ , E $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ , SW $\frac{1}{4}$ NW $\frac{1}{4}$  SE $\frac{1}{4}$ NE $\frac{1}{4}$ .

Aggregating 392.005 acres (gross).

Publication of this NORA in the **Federal Register** will modify Recreation and Public Purpose Classifications N-36900, N-41729 and N-7301G to allow for disposal by exchange of all or a portion of the following described lands:

#### Mount Diablo Meridian, NV

T. 21 S., R. 60 E.,

Sec. 16, N $\frac{1}{2}$ NW $\frac{1}{4}$ .

T. 22 S., R. 61 E.,

Sec. 14: SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$  NE $\frac{1}{4}$ .

Aggregating 82.50 acres (gross).

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1(b), subject to valid and existing rights, publication of this notice in the **Federal Register**, will segregate the public lands, as described in this Notice, from all forms of appropriation

under the public land laws, including the general mining laws, except for leasing under the mineral leasing laws and from any subsequent exchange proposals filed by any other proponent other than Olympic Lands Inc. or their nominee.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication of the **Federal Register** of a notice of termination of the segregation, or the expiration of two years from the date of publication, whichever comes first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P. O. Box 26569, Las Vegas, NV 89126. Any adverse comments will be reviewed by the State Director.

Dated: November 2, 1992.

Ben F. Collins,

District Manager.

[FR Doc. 92-27608 Filed 11-13-92; 8:45 am]

BILLING CODE 4310-HC-M

[AA-660-03-4191-02]

#### Rental Fees, Mining Claim Recordation, and Assessment Work

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of requirement to pay rental fee of \$100 per mining claim or site pursuant to Public Law 102-381.

**SUMMARY:** On October 5, 1992, The Department of the Interior and Related Agencies Appropriation Act for Fiscal Year 1993 (Pub. L. 102-381), 106 Stat. 1374) was signed into law. The provisions of the law are effective upon enactment. It requires that mining claimants holding mining claims and sites located upon public lands of the United States, shall, with certain exceptions, pay a rental fee of \$100 per mining claim or site, mill site, or tunnel site in lieu of performing assessment work required under the Mining Law (30 U.S.C. 28-28e) and recording the affidavit of labor or a notice of intent to hold under section 314 (a) and (c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744[a] and [c]).

Claimants holding mining claims or sites located on or after October 6, 1992, must pay the \$100 rental fee at the time of recording with BLM. Claimants holding mining claims or sites located on or before October 5, 1992, must pay the proper rental fees on or before August 31, 1993.

However, as in the past, the affidavit of assessment is still required to be filed with BLM for this filing year ending on December 30, 1992.

Proposed rules further describing the requirements of the Act of October 5, 1992, will be published for public review and comment in the very near future. For further information, contact the Bureau of Land Management State Office where your mining claims or sites are recorded.

Dated: November 10, 1992.

Adam A. Sokoloski,

Acting Assistant Director, Energy and Mineral Resources.

[FR Doc. 92-27708 Filed 11-13-92; 8:45 am]

BILLING CODE 4310-84-M

[OR-943-4210-06; GP3-041; WASH-04473]

#### Order Providing for Opening of Public Land in Washington; Correction

The citation stated in paragraph 4 in FR Doc. 92-24475, published on pages 46403-46404, in the issue of Thursday, October 8, 1992, is hereby corrected as follows:

On page 46404, column 1, in unnumbered paragraph 3, line 11, reads "30 U.S.C. 1716, Sec. 38," and is corrected to read "30 U.S.C. Sec. 38".

Dated: November 5, 1992.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 92-27609 Filed 11-13-92; 8:45 am]

BILLING CODE 4310-33-M

#### Fish and Wildlife Service

##### Receipt of Application for Permit

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*, the Endangered Species Act of 1973, as amended (U.S.C. 1531, *et seq.*) and the regulations governing marine mammals and endangered species (50 CFR 17 and 18).

**Applicant:** Florida Department of Natural Resources, PRT-773494, Florida Marine Research Institute, Marine Mammal Section, St. Petersburg, FL.

**Type of Permit:** Scientific Research.

**Name of Animals:** West Indian Manatee (*Trichechus manatus*).

**Summary of Activity to be**



**Authorized:** The applicant proposes to capture, tag [implant with passive integrated transponder (PIT) and platform transmitter terminal (PTT, satellite and VHF)], mark by freeze-brand and tail notch, and collect blood, milk, urine and feces. With the exception of blood, none of these sample collections will require an invasive technique. The applicant also proposes to export skeletal remains and tissue samples from salvaged specimens. This research is aimed at providing a better understanding of mortality and seasonal movement patterns, habitat requirements, population trends, and biomedical characteristics so as to better manage this species throughout its range.

**Source of Marine Mammals for Research:** Wild and captive manatees (undergoing rehabilitation) and all sexes and ages to be used in the research throughout its range.

**Period of Activity:** 5 years.

Concurrent with the publication of this notice in the *Federal Register*, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, Office of Management Authority (OMA), 4401 N. Fairfax Dr., room 432, Arlington, VA 22203 and must be received by the Director within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business working hours (7:45-4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, OMA, 4401 North Fairfax Drive, Room 432, Arlington, VA 22203. Phone: (1-800-358-2104); Fax: (703/358-2281).

Dated: November 19, 1992.

Susan Jacobsen,

*Acting Chief, Branch of Permits, Office of Management Authority.*

[FR Doc. 92-27717 Filed 11-13-92; 8:45 am]

BILLING CODE 4310-55-M

## INTERNATIONAL TRADE COMMISSION

[Investigation 337-TA-338]

### Certain Bulk Bags and Process for Making Same; Initial Determination Terminating Respondent on the Basis of Settlement Agreement; Pacific Rim Marketing Corp.

**Note:** This document, as originally published at 57 FR 53776-53777, November 12, 1992, was incomplete due to a printing error. For this reason, the document is republished in full text below.

**AGENCY:** International Trade Commission.

**ACTION:** Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above captioned investigation terminating the following respondents on the basis of a settlement agreement: Pacific Rim Marketing Corporation.

**SUPPLEMENTARY INFORMATION:** This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on November 5, 1992.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

**Written Comments:** Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the *Federal Register*. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the

Commission and must include a full statement of the reason why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

**FOR FURTHER INFORMATION CONTACT:** Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205-1802.

By order of the Commission.

Issued: November 5, 1992.

Paul R. Bardos,

*Acting Secretary.*

[FR Doc. 92-27369 Filed 11-10-92; 8:45 am]

BILLING CODE 7020-02-M#

[Investigation 337-TA-338]

### Certain Bulk Bags and Process for Making Same, Initial Determination Terminating Respondent on the Basis of Settlement Agreement; Titan Megabags Industrial Corp.

**Note:** This document, as originally published at 57 FR 53776-53777, November 12, 1992, was incomplete due to a printing error. For this reason, the document is republished in full text below.

**AGENCY:** International Trade Commission.

**ACTION:** Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above captioned investigation terminating the following respondents on the basis of a settlement agreement: Titan Megabags Industrial Corporation.

**SUPPLEMENTARY INFORMATION:** This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on November 5, 1992.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the



Commission's TDD terminal on (202) 205-1810.

**Written Comments:** Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

**FOR FURTHER INFORMATION CONTACT:** Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205-1802.

By order of the Commission.

Issued: November 5, 1992.

**Paul R. Bardos,**  
*Acting Secretary.*

[FR Doc. 92-27370 Filed 11-10-92; 8:45 am]

BILLING CODE 7020-02-M

## INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32184]

### Texas, Gonzales & Northern Railway Co.—Acquisition and Operation Exemption—Southern Pacific Transportation Co.

Texas, Gonzales & Northern Railway Company (TXGN), a noncarrier, has filed a verified notice of exemption to acquire and operate a line of Southern Pacific Transportation Company in Gonzales County, TX. The line extends between Southern Pacific milepost 0.10 near Harwood, TX and Southern Pacific milepost 12.30 at Gonzales, TX, a total of 12.20 miles.<sup>1</sup> The parties intend to consummate the acquisition on or before November 15, 1992.

Any comments must be filed with the Commission and served on: Eugenia Langan, 1800 Massachusetts Ave., NW, Washington, DC 20036.

This notice is filed under 49 CFR 1150.31. If the notice contains false or

misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: November 6, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

**Sidney L. Strickland, Jr.,**  
*Secretary.*

[FR Doc. 92-27653 Filed 11-13-92; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 446X)]

### Exemption; CSX Transportation, Inc.; Abandonment Exemption; in Washington County, OH

CSX Transportation, Inc. (CSXT), has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon its 4.11-mile rail line between milepost BB-185.50 at Little Hocking to milepost BB-189.61 at Porterfield, in Washington County, OH.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; and (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in complainant's favor within the 2-year period. CSXT has further certified that the notice requirements at 49 CFR 1105.12 and 49 CFR 1152.50(d)(1) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

This exemption will be effective on December 16, 1992, unless stayed or a formal expression of intent to file an offer of financial assistance (OFA) is filed. Petitions to stay that do not involve environmental issues,<sup>1</sup> formal

<sup>1</sup> A stay will be issued routinely where an informed decision on environmental issues, whether raised by a party or by the Commission's Section of Energy and Environment (SEE), cannot be made before the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Liens*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental grounds is encouraged to file promptly so that the Commission may act on the request before the effective date.

expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),<sup>2</sup> and trail use/rail banking requests under 49 CFR 1152.29<sup>3</sup> must be filed by November 27, 1992. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 7, 1992, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to CSXT's representative: Charles M. Rosenberger, 500 Water Street J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEE will issue an environmental assessment (EA) by November 20, 1992. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927-6248.

Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 6, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

**Sidney L. Strickland, Jr.,**  
*Secretary.*

[FR Doc. 92-27651 Filed 11-13-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket Nos. 28905 (Sub-No. 22; 29430 (Sub-No. 20)]

### CSX Corp., Control, Chessie System, Inc. and Seaboard Coast Line Industries, Inc.; Norfolk Southern Corp. Control, Norfolk and Western Railway Co. and Southern Railway Co. (Arbitration Review)

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of reopening and request for comments.

**SUMMARY:** The Commission is seeking public comment with regard to any issues in these cases that remain open

<sup>2</sup> See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

<sup>3</sup> The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

<sup>1</sup> TXGN's parent, the TNW Corporation, concurrently filed a related notice of exemption in Finance Docket No. 32185, *TNW Corporation—Continuance in Control Exemption—Texas, Gonzales & Northern Railway Company*.



for reconsideration in light of the Supreme Court's decision in *Norfolk & Western v. American Train Dispatchers*, \_\_\_ U.S. \_\_\_ 111 S.Ct. 1156 (1991).

**DATES:** Comments are due by December 31, 1992. Replies to comments are due by February 1, 1993.

**ADDRESSES:** Send pleadings referring to Finance Docket Nos. 28905 (Sub-No. 22) and 29430 (Sub-No. 20) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington DC 20423.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 927-5660. [TDD for hearing impaired: (202) 927-5721].

**SUPPLEMENTARY INFORMATION:** On March 19, 1991, the United States Supreme Court, in its decision in *Norfolk & Western v. American Train Dispatchers*, \_\_\_ U.S. \_\_\_ 111 S.Ct. 1156 (1991); held that a carrier's exemption under § 11341(a) "from all other law" includes the carrier's legal obligations under a collective bargaining agreement; reversed the decision of the United States Court of Appeals for the District of Columbia Circuit in *Brotherhood of Ry. Carmen v. ICC*, 880 F.2d 562 (D.C. Cir. 1989); and remanded to the Court of Appeals for further proceedings. By order filed September 17, 1991, the Court of Appeals remanded Nos. 88-1694, 88-1724, 90-1586, 90-1808, and 90-1610 to us for reconsideration in light of the Supreme Court's decision. This has the effect of reviving the Carmen case (Finance Docket No. 28905 (Sub-No 22)) and the Dispatchers case (Finance Docket No. 29430 (Sub-No. 20)). We are required to reconsider, in light of the Supreme Court's decision, our decisions in *CSX Corp.—Control—Chessie and Seaboard C.L.I.*, 4 I.C.C.2d 641 (1988) (*Carmen I*), *Norfolk Southern Corp.—Control—Norfolk & W. Ry. Co.*, 4 I.C.C.2d 1080 (1988) (*Dispatchers I*), and *CSX Corp.—Control—Chessie and Seaboard C.L.I.*, 6 I.C.C.2d 715 (1990) (*Carmen II*).

We are reopening these cases to allow the parties, and other interested persons as well, to submit such additional arguments as they deem appropriate with regard to any issues in these cases that remain open for reconsideration in light of the Supreme court's decision.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927-5721.]

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: November 3, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,  
Secretary.

[FR Doc. 92-27650 Filed 11-13-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32185]

### **TNW Corp.—Continuance in Control Exemption—Texas, Gonzales & Northern Railway Co.**

TNW Corporation (TNW), a noncarrier in control of several railroad companies, has filed a notice of exemption to continue to control Texas, Gonzales & Northern Railway Company (TXGN), upon the latter's becoming a carrier.

TXGN, a noncarrier, has concurrently filed a notice of exemption in Finance Docket No. 32184, *Texas, Gonzales & Northern Railway Company—Acquisition and Operation Exemption—Southern Pacific Transportation Company*, to operate as a railroad common carrier in Texas. The transaction involved there is expected to be consummated on or before November 15, 1992.

TNW indicates that: (1) The railroads will not connect with each other; (2) the continuance in control is not a part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a class I carrier. The transaction therefore is exempt from the prior approval requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Eugenia Langan, 1800 Massachusetts Ave., NW, Washington, DC 20036.

Decided: November 6, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,  
Secretary.

[FR Doc. 92-27652 Filed 11-13-92; 8:45 am]

BILLING CODE 7035-01-M

## **DEPARTMENT OF LABOR**

### **Bureau of Labor Statistics**

#### **Labor Research Advisory Council; Meetings and Agenda**

The Fall meetings of committees of the Labor Research Advisory Council will be held on December 1, 2, and 3. All of the meetings will be held in the Conference Center of the Postal Square Building, rooms 9 and 10, 2 Massachusetts Avenue, NE., Washington, DC.

The Labor Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of union research directors and staff members. The schedule and agenda of the meetings are as follows:

#### **Tuesday, December 1, 1992**

9:30 a.m.—Committee on Employment and Unemployment Statistics—Rooms 9 and 10, Conference Center, PSB

1. Status of budget.
2. Discussion: Sources of information to assess quality of jobs.
3. Program reports:
  - a. Mass layoff statistics.
  - b. Longitudinal wage record initiatives.
  - c. Business Establishment List.
  - d. Current Population Survey redesign.

1:30 p.m.—Committee on Prices and Living Conditions—Rooms 9 & 10, Conference Center, PSB.

1. Plans for the CPI Revision.
2. Status report on the International Price Revision.

3. Report on Purchasing Power Parities issued by the Organization for Economic Cooperation and Development.
4. Other business.

#### **Wednesday, December 2, 1992**

9:30 a.m.—Committee on Productivity, Technology and Growth—Rooms 9 & 10, Conference Center, PSB

1. Assumption for the new set of projections.
2. Brief update on status of Bureau of Economic Analysis work on real gross product originating.
3. Study of productivity and changes in work force composition.



*11:30 a.m.—Committee on Foreign Labor Statistics*

1. Progress report on international comparisons of alternative unemployment indicators.
2. Update on BLS technical cooperation with Central and East European and Mexican statistical office.

*1:30 p.m.—Committee on Wages and Industrial Relations—Rooms 9 & 10, Conference Center, PSB*

1. Review of activities in progress (including the Occupational Compensation Survey Program).
2. Results from the health care claim model.
3. The new locality pay and benefits bulletin.
4. Compensation cost levels: a comparison between State and local government and private industry.
5. Discussion of the use of Locality Benefits data to assist in the Occupational Compensation Survey Design.

**Thursday, December 3, 1992**

*10 a.m.–3 p.m.—Committee on Occupational Safety and Health Statistics—Rooms 9 & 10, Conference Center, PSB*

1. Annual survey.
2. Status report on the redesign of the occupational safety and health statistics program.
3. Status report on the Census of Fatal Occupational Injuries.
4. Other business.

The meetings are open to the public. Persons planning to attend these meetings as observers may want to contact Wilhelmina Abner on (Area Code 202) 606-5887.

Signed at Washington, DC this 6th day of November, 1992.

**William G. Barron, Jr.,**

*Deputy Commissioner.*

[FR Doc. 92-27692 Filed 11-13-92; 8:45 am]

BILLING CODE 4510-24-M

## **Employment and Training Administration**

### **Emergency Unemployment Compensation; General Administration Letter for Implementing Title I of the Emergency Unemployment Compensation Act of 1991 and Other Provisions**

On November 15, 1991, the President signed into law the Emergency Unemployment Compensation Act of 1991 (Pub. L. 102-164), which in Title I created the Emergency Unemployment Compensation (EUC) program. On December 4, 1991, the President signed into law Public Law 102-182, which provided amendments to the Emergency Unemployment Compensation Act of 1991, as if such amendments were included in that Act, as of its effective date (weeks of unemployment beginning on and after November 17, 1991). On

February 7, 1992, the President signed into law Public Law 102-244, further amending the Emergency Unemployment Compensation Act of 1991, effective for weeks of unemployment beginning after the date of enactment. On July 3, 1992, the President signed into law Public Law 102-318, which not only amended the Emergency Unemployment Compensation Act of 1991, but the Federal-State Extended Unemployment Compensation Act of 1970, which amended provisions are applicable to the EUC program. With certain exceptions, the amendments were effective for weeks of unemployment beginning after July 3, 1992.

In its role as principal in the EUC program, the Department of Labor issued controlling guidance for the States and cooperating State agencies in the operating instructions set forth in the Attachments to GAL 4-92, dated November 27, 1991. Based on issues raised by the States and cooperating State agencies, GAL 4-92, Change 1 was issued February 10, 1992, providing changes to, and clarifications of, the operating instructions set forth in the Attachments to GAL 4-92. In order to assure knowledge to the public of these operating instructions, both of these documents were published in the **Federal Register** on February 14, 1992 (57 FR 5472).

GAL 4-92, Change 2 was issued February 13, 1992, providing changes to the operating instructions set forth in the Attachments to GAL 4-92 because of the amendments enacted February 7, 1992 (Pub. L. 102-244). GAL 4-92, Change 2 was published in the **Federal Register** on March 11, 1992 (57 FR 8683).

GAL 4-92, Change 3 was issued June 4, 1992, which revised Section III.M., Fraud and Overpayment, in Attachment A to GAL 4-92. Changes and clarifications were needed in order to assure uniform application of the provisions by the States and cooperating State agencies. GAL 4-92, Change 3 was published in the **Federal Register** on June 24, 1992 (57 FR 28188).

GAL 4-92, Change 4 was issued on July 9, 1992, providing substantive changes to the operating instructions set forth in Attachments A, B, and C to GAL 4-92 because of the amendments enacted July 3, 1992 (Pub. L. 102-318). GAL 4-92, Change 4 was published in the **Federal Register** on August 11, 1992 (57 FR 35846).

Therefore, GALs 4-92; 4-92, Change 1; 4-92, Change 2; 4-92, Change 3; and 4-92 Change 4 (or any subsequent or supplemental operating instructions) provide the essential operating instructions to the States, which

administer the EUC program pursuant to agreements between the States and the Secretary of Labor.

However, due to the significant requirements provided in these five separate documents, the Department of Labor, in order to assist the States and cooperating State agencies in the administration of the EUC program, issued a consolidation of the Attachments in the five previous GALs with the Attachments to GAL 12-92. GAL 12-92 was issued September 11, 1992.

Since the States and cooperating State agencies may not vary from the consolidated operating instructions attached to GAL 12-92 (or any subsequent or supplemental operating instructions), without the prior approval of the Department of Labor, GAL 12-92 is published below as a continuation of assuring public notification of the required procedures as a replacement for the five previously issued documents.

Signed at Washington, DC, on October 30, 1992.

**Roberts T. Jones,**

*Assistant Secretary of Labor.*

Classification: UI/EUC

Correspondence Symbol: TEUMI

Date: Sept. 11, 1992

Directive: General Administration Letter No. 12-92

To: All State Employment Security Agencies

From: Donald J. Kulick, Administrator for Regional Management

Subject: Consolidation of the Attachments to GAL 4-92 Incorporating GAL 4-92, Changes 1 Through 4

1. *Purpose.* To provide State Employment Security Agencies (SESAs) with a consolidation of the Attachments to GAL 4-92 in order to assist SESAs in the administration of the emergency unemployment compensation (EUC) program.

2. *References.* GAL 4-92 and GAL 4-92, Changes 1 through 4.

3. *Substance.* The attached consolidation of Attachments A, B, and C to GAL 4-92 incorporating the changes made by GAL 4-92, Changes 1, 2, 3, and 4 are controlling guidance for the States and cooperating State agencies in the administration of the EUC program, is a compilation of the five separate documents.

In this consolidation, one clarifying "NOTE" has been added to those previously included in the Attachments. It is at the end of section III.L.3.b. (pg. 44). It clarifies that an individual may change his/her initial election to receive



EUC in lieu of regular compensation at any time subsequent to the initial election for weeks of unemployment not yet paid at the time of such subsequent election. However, once an election is made there can be no retroactive retraction of the election. One exception is provided, however, for a retroactive election. The exception is that a retroactive election is permitted for an individual's initial election under section 102(b)(2)(B) of the Unemployment Compensation Amendments of 1992, if such election is made at the first opportunity given the individual to make an informed election, for all weeks of unemployment beginning after July 3, 1992.

Also, as an editorial correction, the heading for section III.E.2.b.(i) (pg. 33) has been changed to "Twenty Weeks".

In addition, section 5. of Attachment C has been revised to reflect Office of Management and Budget (OMB) approval.

This General Administration Letter and Attachment will be published in the **Federal Register**.

4. *Action Required.* SESA Administrators should ensure that the attached consolidation is distributed to appropriate individuals.

5. *Inquiries.* Questions should be directed to the appropriate Regional Office.

6. *Attachment.* Consolidated Version of Attachments A, B, and C to GAL 4-92.

Attached is a consolidated version of Attachments A, B, and C to GAL 4-92 incorporating the changes made by GAL 4-92, Changes 1, 2, 3, and 4.

This consolidation was prepared by the Unemployment Insurance Service, Office of Program Management, Division of Program Development and Implementation.

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## Attachment A—Emergency Unemployment Compensation Implementing Instructions

Throughout Attachment A, various references are made to specific Sections of the Federal-State Extended Unemployment Compensation Act of 1970, by using such phrases as "in accordance with" or "as required by" or similar phrasing. In all cases such phrasings mean State law provisions that are "in accordance with" or "as required by" the specific provisions of the Federal-State Extended Unemployment Compensation Act of 1970, as implemented by 20 CFR part 615.

Therefore, State law provisions which are consistent with 20 CFR part 615 govern the payment of EUC, except where such provisions are inconsistent with the provisions of Public Law, 102-164, as amended, and these operating instructions.

Title I of Public Law 102-164 created The Emergency Unemployment Compensation (EUC) Program.

### *I. Section-by-Section Explanation of Title I of Public Law 102-164, as Amended by Public Laws 102-182 and 102-244 and Further Amended by Pub. L. 102-318*

#### *A. Section 1—Title of Program.*

Public Law (Pub. L.) 102-164, as amended, may be cited as the "Emergency Unemployment Compensation Act of 1991" and the program established by Title I shall be known as the EUC Program.

#### *B. Section 101—Federal-State Agreements.*

##### *1. Agreements.*

Subsection (a) provides for administration of the EUC Program through an agreement between the Secretary of Labor and the State. The agreement may be terminated by the State on 30 days' written notice to the Secretary.

##### *2. Eligible Individuals.*

Subsection (b) provides for payment of EUC to individuals who:

- a. Have exhausted all rights to regular compensation under the State law,
- b. Have no rights to compensation (including regular and extended compensation) for a week under such law or any other State unemployment compensation law or to compensation under any other Federal law,
- c. Are not paid or entitled to be paid any additional compensation under any such State or Federal law, and
- d. Are not receiving compensation for such week under the unemployment compensation law of Canada.

EUC is payable for any week of unemployment which begins in an individual's period of eligibility (as defined in Section 106(a)(2) of the Act).

#### *3. Exhaustion of Regular Benefits.*

For EUC, subsection (c) defines an exhaustion of regular benefits as occurring when:

- a. No regular benefits may be paid because the individual has received all regular compensation available based on employment and/or wages during the base period, or
- b. Rights to regular benefits were terminated because of the expiration of the benefit year with respect to which such rights existed.

#### *4. Weekly Amount of EUC Payable; Applicability of Extended Benefit (EB) Provisions.*

Subsection (d) provides: (a) That the weekly amount of EUC payable for a week of total unemployment will be equal to the amount of regular compensation (including dependents' allowances) payable during the most recent benefit year, (b) except where inconsistent with the EUC law (as set out in these instructions), the terms and conditions of State law for payment of extended compensation apply to EUC claims, and (c) the maximum amount payable to any individual shall not exceed the amount established in an EUC account for such individual eligible for EUC.

#### *5. Election by States; Weeks of Benefits During Phase-out.*

##### *a. Election by States.—*

(i) Subsection (e) provides that the Governor of a State is authorized to and may elect to trigger off an EB period if State law permits, in order to provide payment of EUC to individuals who have exhausted their rights to regular compensation under the State law.

(ii) The preceding sentence shall not be applicable with respect to any EB period which begins after March 6, 1993, nor shall the special rule in Section 203(b)(1)(B) (i.e., no EB period may begin before the fourteenth week after the end of a previous EB period) of the Federal-State Extended Unemployment Compensation Act of 1970 (or similar

provision of State law) operate to preclude the beginning of an EB period after March 6, 1993, because of the ending of an earlier EB period under the preceding sentence (i.e., Governor's waiver).

#### *b. Weeks of Benefits During Phaseout.—*

Notwithstanding the requirement that an individual must have no rights to compensation under Section 101(b)(1)(B) of the EUC Act or any other provision of law, if for any week beginning after March 6, 1993, an EB period is triggered on with respect to a State, an individual entitled to EB, whether claiming benefits or not, in the State for such week and any following week shall be paid either EUC or EB under the State law, whichever is greater, but in no case may both be paid.

#### *6. Certain Rights to Regular Compensation Disregarded.*

If an individual exhausts his/her rights to regular compensation for any benefit year, such individual's eligibility to receive EUC with respect to such benefit year shall be determined without regard to any rights to regular compensation for a subsequent benefit year if the individual does not file a claim for regular compensation for such subsequent benefit year.

**Note:** The individual is given the choice after explanation of the advantages and disadvantages of filing for regular compensation for a subsequent benefit year. An individual who does file such a claim for regular compensation will not be eligible for any further EUC based on the previous benefit year. This amendment applies to all weeks of unemployment beginning after July 3, 1992.

#### *C. Section 102—EUC Account.*

##### *1. Account Establishment.*

Subsection (a) provides that an EUC account will be established for each eligible individual who files an application for EUC.

##### *2. Maximum EUC Payable.*

Subsection (b) provides that the amount payable as established in each individual account is the lesser of:

- a. 130 percent of the total amount of regular compensation (including dependents' allowances) payable with respect to the most recent benefit year, or

**Note:** As provided below, any individual filing a new EUC claim for a week of unemployment beginning after June 13, 1992 will have entitlement computed based on a reversion back to the 100 percent factor, unless the provisions of paragraphs d. or e. of Section I.C.3. are in effect, then the percentage shall be lower, as prescribed.

- b. the applicable limit times the average weekly benefit amount for the



benefit year as determined for extended benefits under 20 CFR 615.6.

### 3. *Applicable Limit.*

The applicable limit under section 102(b)(2) is:

a. 33, in the case of weeks beginning during a high unemployment period.

b. 26, in the case of weeks not beginning during a high unemployment period.

c. *Reduction For Weeks After June 13, 1992.*—In the case of weeks beginning after June 13, 1992—

(i) substitute 26 for 33 in paragraph a. and 20 for 26 in paragraph b., and

(ii) substitute 100 percent for 130 percent in paragraph a. in section I.C.2.

d. *Reduction For Weeks in 7-Percent Period.*—In the case of weeks beginning in a 7-percent period—

(i) paragraph c. shall not apply,

(ii) substitute 15 for 33 in paragraph a. and 10 for 26 in paragraph b., and

(iii) substitute 60 percent for 130 percent in paragraph a. in section I.C.2.

e. *Reduction For Weeks in 6.8-Percent Period.*—In the case of weeks beginning in a 6.8-percent period—

(i) paragraphs c. and d. shall not apply,

(ii) substitute 13 for 33 in paragraph a. and 7 for 26 in paragraph b., and

(iii) substitute 50 percent for 130 percent in paragraph a. in section I.C.2.

f. *7-Percent Period; 6.8 Percent Period.*—For purposes of this paragraph—

(i) A 7-percent period means a period which begins with the second week after the first week for which the requirements of clause (ii) are met, and a 6.8-percent period means a period which begins with the second week after the first week for which the requirements of clause (iii) are met.

(ii) The requirements of this clause (ii) are met for any week if the average rate of total unemployment (seasonally adjusted) for all States for the period consisting of the most recent 2-calendar month period (for which data are published before the close of such week) is at least 6.8 percent, but less than 7 percent.

(iii) The requirements of this clause (iii) are met for any week if the average rate of total unemployment (seasonally adjusted) for all States for the period consisting of the most recent 2-calendar month period (for which data are published before the close of such week) is less than 6.8 percent.

In no event shall a 7-percent period occur after a 6.8 percent period occurs, and a 6.8-percent period, once begun, shall continue in effect for all weeks thereafter for which benefits are provided under the EUC Act.

g. *Limitations on Reductions.* In the case of an individual who is receiving EUC for a week preceding the first week for which a reduction applies under paragraphs c., d. or e., such reduction shall not apply to such individual for any week thereafter for which the individual is otherwise eligible for EUC.

**Note:** The above provision means that if an individual is eligible for EUC for any week prior to the week a reduction is to occur, his or her account balance is not reduced thereafter except for amounts actually paid, even though the individual is not paid for every week. If the individual claims a week for which he/she is not eligible, such individual's account is not subject to reduction unless there is an overpayment. But depending on the circumstances, the individual may be subject to an applicable disqualification and liable for any overpayment.

### 4. *No Reduction of applicable Limit.*

Except as provided in 3.c., d., and e. in Section I.C.3., an individual's applicable limit for any week shall not be less than the highest applicable limit in effect for any prior week for which EUC was payable to the individual from the account established for such individual.

### 5. *Increase in Applicable Limit.*

If the applicable limit in effect for any week increases to a limit higher than the limit for any prior week, then the applicable limit is the higher limit reduced by the number of prior EUC weeks paid from the account established for the individual.

### 6. *Reduction for Extended Benefits.*

An individual's EUC maximum amount shall be reduced (but not below zero) by the aggregate amount of extended compensation (if any) received by the individual related to the same benefit year under the Federal-State Extended Unemployment Compensation Act of 1970.

### 7. *Weekly Benefit Amount.*

An individual's weekly benefit amount for any week will be equal to the amount of regular compensation (including dependents' allowances) payable under the State law. This is a duplicate provision of Section 101(d)(1) of the Act and described at I.B.4. of this GAL.

### 8. *Periods.*

Subsections (c) and (d) describe the periods or weeks that an individual may be entitled to EUC.

The term "high unemployment period" means, with respect to any State, the period which begins with the third week after the first week for which the State triggers "On" for a high unemployment period and ends with the third week after the first week for which the State triggers "Off" the requirements for a high unemployment period.

(i) The requirements are satisfied for a high unemployment in a State if the adjusted rate of insured unemployment in the State for such week and the immediately preceding 12 weeks is at least 5 percent, or

(ii) The average rate of total unemployment in such State for the period consisting of the most recent 6-calendar month period (published data) is at least 9 percent.

### 9. *Special Rules.*

Subsection (e) provides special rules related to periods.

a. *Minimum Duration.* A high unemployment period shall last for not less than 13 weeks.

b. *Notification by Secretary.* When a determination has been made that a high unemployment period is beginning or ending in a State, the Secretary shall publish such determination in the Federal Register.

### 10. *Effective Dates.*

Subsection (f) provides that EUC becomes payable the later of:

a. (i) The week beginning November 17, 1991, or

(ii) The week following the week in which an agreement is entered into.

b. No new EUC claims may be made effective for any week which begins after March 6, 1993. In the case of an individual who is receiving EUC for a week prior to or including March 6, 1993, EUC shall continue to be payable to such individual for any week thereafter for which the individual is otherwise eligible. No EUC shall be payable, however, for any week beginning after June 19, 1993.

**Note:** The above provision means that if an individual is eligible for EUC for any week prior to or including March 6, 1993, his or her account balance is not reduced thereafter except for amounts actually paid even though the individual is not paid for every week. If the individual claims a week for which he/she is not eligible, such individual's account is not subject to reduction unless there is an overpayment. But depending on the circumstances, "the individual may be subject to an applicable disqualification and liable for any overpayment."

### 11. *Reachback Provisions.*

a. *In General.* If any individual who has a benefit year that ends after February 28, 1991, such individual shall be entitled to EUC in the same manner as if such individual's benefit year ended no earlier than the last day of the first week following November 16, 1991.

b. *Limitation of Benefits.* If an individual has received rights to both regular and extended benefits, any EUC payable must be reduced by the amount of EB received.

### 12. *Transitional and Special Rules.*



Subsection (g) provides that for purposes of determining whether a high unemployment period is in effect for the first week in which EUC may be paid, the Act shall be treated as having been in effect for all weeks ending on or after October 19, 1991. For purposes of determining whether a high unemployment period shall begin with the first week in which EUC may become payable, the actual and estimated data developed by DOL for a State for the week which ends October 19, 1991 is to be utilized.

**D. Section 103—Payments to the States.**

**1. Amounts.**

Subsection (a) authorizes payments to a State, which has entered into an agreement, equal to 100 percent of the amount of EUC payments made by the State in accordance with the Act and these instructions, as determined by the Secretary.

**2. UCFE-UCX.**

Subsection (b) specifies that a State is not entitled to reimbursement to the extent the State is reimbursed under any other Federal law, and that a State is not entitled to reimbursement for EUC payments to UCFE and UCX claimants under Chapter 85 to the extent the State receives reimbursement under P.L. 102-164 from the funds provided for EUC payments.

**3. Method of Payment.**

Subsection (c) provides for payments to the States either in advance or by reimbursement in amounts the Secretary estimates for each calendar month. Estimates may be made based on statistical sampling, or other agreed upon methods.

**E. Section 104—Financing Provisions.**

**1. EB Account.**

Subsection (a) requires the use of funds in the Extended Unemployment Compensation Account (EUCA) in the Unemployment Trust Fund for payments to States for the costs of EUC.

Subsection (b) provides that the Secretary of Labor will, from time to time, certify to the Secretary of the Treasury the amounts to be paid to States and the Secretary of the Treasury will make such payments prior to audit or settlement by the General Accounting Office.

**2. Authorization.**

Subsection (c) authorizes Congress to appropriate funds to finance costs of EUC administration. Subsection (d) authorizes Congress to appropriate general revenue funds to the EUCA account to cover costs of EUC payable to UCFE/UCX, State and local government, and 26 U.S.C. 501(c)(3) non-profit organization claimants. New Subsection (e) directs the Secretary of

Treasury to transfer general revenue funds from the Treasury to the EUCA account to make payments under the EUC Act by reason of the amendments made to Sections 101 and 102 of the EUC Act of 1991 and to the employment security administration account such sums as may be necessary for purposes of assisting States in meeting administrative costs by reason of the amendments made by Sections 101, 102, 201 and 202 of the "Unemployment Compensation Amendments of 1992" (P.L. 102-318).

**F. Section 105—Fraud and Overpayments.**

**1. Fraud Penalties.**

Subsection (a) specifies that if an individual knowingly has made or cause to be made by another, a false statement or representation or nondisclosure of a material fact and as a result obtains any amount of EUC to which he/she has not entitled, the individual:

- a. Shall be ineligible for further EUC, as provided in the provisions of the applicable State law relating to fraudulent claims, and
- b. Shall be subject to prosecution under 18 U.S.C. 1001.

**2. Recovery of Overpayments.**

Subsection (b) specifies that the States shall require repayment of EUC overpayments, except that the State agency may waive repayment if:

- a. the individual was without fault in receiving the payment, and
- b. Repayment would be contrary to equity and good conscience.

The criteria for the above tests of waiver of overpayments are detailed in the instructions under recovery of overpayments.

Subsection (c)(1) authorizes recovery of EUC overpayments by offset against any EUC payable or against any compensation or amount in the nature of compensation payable under any other Federal unemployment compensation law (UCFE or UCX) or similar Federal law (TRA, DUA, REPP, AEPP, etc.) administered by the State agency. The period during which EUC overpayments may be recovered by offset is limited to 3 years after the date the improper payment was received, and recoupment may not exceed 50 percent of the individual's weekly benefit payment from which the deduction is made.

**3. Fair Hearing.**

Subsection (c)(2) prohibits recovery of the overpayment until an appealable determination has been issued and has become final.

**4. Review.**

Subsection (d) provides that reconsideration and appeal rights from determinations made under the State law also apply to EUC fraud and

overpayment determinations. It should be especially noted that such reconsideration and appeal rights apply to all determinations of entitlement to or denial of rights to EUC.

**G. Section 106—Definitions.**

**1. Terms.**

Under Subsection (a)(1), the following terms have the same meaning as those applied to claims for extended benefits:

- a. Compensation
- b. Regular Compensation
- c. Extended Compensation
- d. Additional Compensation
- e. Benefit Year
- f. Base Period
- f. State
- g. State Agency
- h. State Law
- i. Week

The meanings assigned to these terms in the extended benefit regulations (20 CFR part 615) shall apply to the EUC program.

**2. Period of Eligibility.**

Subsection (a)(2) limits eligibility for EUC by specifying that an individual will have a period of eligibility for EUC for any week:

- a. That begins on or after November 17, 1991 and,
- b. Begins before March 6, 1993, except that an individual shall not have any period of eligibility unless his/her benefit year ends on or after November 16, 1991 or, in the case of reachback, is treated as having a benefit year ending after such date. (See Section 102(f)(3)(A) of the Act.)

Subsection (a)(3) provides that the adjusted rate of insured unemployment (AIUR) shall be computed in the same manner as the rate of insured unemployment is determined under Section 203 of the Federal-State Extended Unemployment Compensation Act of 1970, except that individuals exhausting their rights to regular compensation during the most recent 3 calendar months for which data are available shall be added to the numerator as if they were individuals filing claims for regular compensation.

Subsection (a)(4) defines the term "rate of total unemployment" as follows: The term "rate of total unemployment" (TUR) means, with respect to any period, the average unadjusted total rate of unemployment (as determined by the Secretary) for a State for such period.

- c. Subsection (b) provides that any AIUR, or TUR that is computed shall be rounded to the nearest 1/10th percent.

**H. Other Provisions of the "Unemployment Compensation Amendments of 1992" (P.L. 102-318).**



**1. Section 102(b)—Modification of Eligibility Requirements—Transition Rules.**

**a. Prohibition of Recovery of Certain Overpayments.**

On and after the date of enactment of Pub. L. 102-318 (July 3, 1992), no repayment of any EUC shall be required under Section 105 of the EUC Act of 1991 if the individual would have been entitled to EUC had the amendment to the requirement that a new claim for regular compensation be filed (now changed by the addition of paragraph (f) to Section 101) been in effect since the beginning of the EUC Act of 1991.

**Note:** The application of Section 102(b)(2)(A) creates a statutory bar prohibiting the states from taking action under Section 105 to enforce recovery of outstanding overpayment balances as of July 3, 1992, for individuals who would have been entitled to EUC had the amendment made by Section 102(a) of Pub. L. 102-318 been in effect since the start of the EUC program. Any overpayment determinations issued by the States to individuals under the law as in effect before the amendment in 102(a) are valid and shall not be changed. This means that liability for the overpayment remains unchanged, but that the enforcement of the liability to repay the balance of the outstanding overpayment on and after July 3, 1992, is changed. The application of Section 102(b)(2)(A), in actuality, is not a waiver in that there are no "equity and good conscience" tests applied to each individual's situation; rather it is a blanket withdrawal of authority to enforce recovery of the overpaid amount. Overpayments for which enforcement of recovery is prohibited will be reflected as a write-off on line 205 of the ETA 227 report.

Section 102(b)(2)(A) prohibits the recovery of EUC non-fraudulent overpayments solely if the individual would have been entitled to EUC had the amendment made by Section 102(a) of Pub. L. 102-318 been in effect since the start of the EUC program. States should apply the following guidelines and procedures in implementing this provision—

- No EUC overpayment determination for any reason other than for the amendment made by Section 102(a) of Pub. L. 102-318 is subject to the write-off because of Section 102(b)(2)(A).

- Recovered amounts received by the State before July 3, 1992, are not subject to the write-off in Section 102(b)(2)(A) and will not be returned to the individual by the State.

- As of July 3, 1992, States shall cease all Section 105 actions to enforce recovery of outstanding balances of overpayments which are subject to the prohibition of Section 102(b)(2)(A) of Pub. L. 102-318. This means that States shall return any repayments received from an individual on and after July 3,

1992, if the individual is subject to the amendment made by Section 102(a) and the individual has not been notified that repayment is not required. If an individual subject to the amendment made by Section 102(a) voluntarily repays the State, all or part of the outstanding overpayment balance on or after July 3, 1992, after notification that repayment is not required, the State shall accept the repayment for return to the EUCA. In no event shall an individual receive duplicate payments under different programs for the same week.

- States shall not issue a redetermination implementing the amendment made by Section 102(a) if a previous determination waiving the recovery of an overpayment under Section 105(b) of the EUC Act was issued to an individual who is subject to the amendment made by Section 102(a) of Pub. L. 102-318.

**b. Waiver of Rights to Certain Regular Benefits.**

If—

- (i) Before the date of enactment of Pub. L. 102-318, an individual exhausted his/her rights to regular compensation for any benefit year, and

- (ii) Such individual was not eligible to receive EUC because of being entitled to regular compensation for a subsequent benefit year, such individual may elect to defer his/her rights to regular compensation with respect to weeks beginning after the date of enactment of Pub. L. 102-318 until such individual has exhausted his/her rights to EUC. Such individual shall be entitled to receive EUC for such weeks in the same manner as if he/she had not been entitled to regular compensation on the subsequent benefit year claim.

**2. Section 104—Persian Gulf Reservists.**

**a. Application.**

This section is a free-standing addition not affecting any other provision of law. This section is only applicable to reservists called-up to active duty in a reserve status in the Armed Forces after August 2, 1990 and before March 1, 1991, and, subject to the provisions in this section, affects the reservist's EUC weekly benefit amount payable after exhaustion of regular UCX benefits, and for weeks beginning after enactment of Pub. L. 102-318. The application of this section has no effect on the reservist's maximum amount of EUC payable as determined under the provisions of Section 102(b)(1) of the EUC Act.

**b. Provisions.**

If a reservist, as described in paragraph a. above, was receiving regular compensation, extended

compensation, or trade readjustment allowances for the week he/she was called-up to active duty (for at least 90 continuous days), and if the reservist was entitled to regular compensation on the basis of such active duty in the Armed Forces at a weekly amount that was less than the amount to which he/she was entitled for the week of call-up, the reservist will receive an EUC weekly benefit amount (after exhaustion of the regular compensation based on the active duty) equal to the weekly amount of the claim in effect during the week of call-up to active duty.

**Note:** The provisions discussed above in new paragraph b. of Section I.B. of Attachment A and new Section I.H.1.b. of Attachment A shall also be applicable to such Persian Gulf Reservists.

**3. Section 202—Modification of Extended Benefits Eligibility Requirements.**

**A. Earnings Test.**

Section 202(a)(5) of the Federal-State Extended Unemployment Compensation Act of 1970 is amended to provide that a State may use one or more of the specified methods of determining extended benefits eligibility, i.e., 20 weeks of work, 1 and ½ times high quarter wages or 40 times the individual's weekly benefit amount. Prior to July 3, 1992, only one specified method was permitted.

**b. Application to EUC.**

Notwithstanding any other provision of law (which includes Section 101(d)(2) of the EUC Act of 1991 and corresponding provisions of State law), the provisions of paragraph a. are applicable to EUC for weeks of unemployment beginning after the date of enactment of Pub. L. 102-318 (July 3, 1992).

**Note:** This means that conforming amendments to State laws are not necessary to put this provision into effect for EUC.

**c. Prohibition of Recovery of Certain Overpayments.**

On and after July 3, 1992, no repayment of any EUC shall be required under Section 105 of the EUC Act if the individual would have been entitled to benefits had the "earnings test" amendment mentioned in paragraph a. of this section applied to all weeks beginning on or before July 3, 1992.

**Note:** The application of Section 202(a)(2)(B) creates a statutory bar prohibiting the States from taking action under Section 105 to enforce recovery of outstanding overpayment balances as of July 3, 1992, for individuals who would have been entitled to EUC had the amendment made by Section 202(a)(1) of Pub. L. 102-318 been in effect since the start of the EUC program. Any overpayment determinations issued by



the States to individuals under the law as in effect before the amendment in Section 202(a)(1) are valid and shall not be changed. This means that liability for the overpayment remains unchanged, but that enforcement of the liability to repay the balance of the outstanding overpayment on and after July 3, 1992, is changed. The application of Section 202(a)(2)(B), in actuality, is not a waiver in that there are no "equity and good conscience" tests applied to each individual's situation; rather it is a blanket withdrawal of authority to enforce recovery of the overpaid amount. Overpayments for which enforcement of recovery is prohibited will be reflected as write-offs on line 205 of the ETA 227 report.

Section 202(a)(2)(B) prohibits the recovery of EUC non-fraudulent overpayments solely if the individual would have been entitled to EUC had the amendment made by Section 202(a)(1) of Pub. L. 102-318 been in effect since the start of the EUC program. States should apply the following guidelines and procedures in implementing this provision—

- No EUC overpayment determination for any reason other than for the amendment made by Section 202(a)(1) of Pub. L. 102-318 is subject to the write-off because of Section 202(a)(2)(B).

- Recovered amounts received by the State before July 3, 1992, are not subject to the write-off in Section 202(a)(2)(B) and will not be returned to the individual by the State.

- As of July 3, 1992, States shall cease all Section 105 actions to enforce recovery of outstanding balances of overpayments which are subject to the prohibition in Section 202(a)(2)(B) of Pub. L. 102-318. This means that States shall return any repayments received from an individual on and after July 3, 1992, if the individual is subject to the amendment made by Section 202(a)(1) and the individual has not been notified that repayment is not required. If an individual subject to the amendment made by Section 202(a)(1) voluntarily repays the State, all or part of the outstanding overpayment balance on or after July 3, 1992, after notification that repayment is not required, the State shall accept the repayment for return to the EUC. In no event shall an individual receive duplicate payments under different programs for the same week.

- States shall not issue a redetermination implementing the amendment made by Section 202(a)(1) if a previous determination waiving the recovery of an overpayment under Section 105(b) of the EUC Act was issued to an individual who is subject to the amendment made by Section 202(a)(1) of Pub. L. 102-318.

## II. The Emergency Unemployment Compensation (EUC) Trigger Mechanism.

### A. Duration and Periods.

There are two periods or levels of benefits under the EUC program: high unemployment or not in a high unemployment period.

#### 1. High Unemployment Period.

For a State to trigger onto a high unemployment period, one of the following situations must exit:

- a. The State average (or "mean") rate of total unemployment (MTUR) for the most recent six-month period for which data are published is at least 9 percent.

or

- b. The State AIUR for the week and the immediately preceding 12 weeks is at least 5 percent.

#### 2. Not in a High Unemployment Period.

Any State that does not meet either of the criteria for a high unemployment trigger is not in a high unemployment period.

#### B. Beginning Date for a Period.

The beginning date for a period will be the beginning of the third week after the week in which the requirements specified for that particular period are met.

#### C. Ending Date for a Period.

A period will end with the last day of the third week following the week in which the State no longer meets the requirements for that period.

#### D. Duration of Periods/Movement Between Periods.

##### 1. High Unemployment Period.

Once a State triggers onto a high unemployment period, it shall continue in that period for at least 13 weeks, regardless of the trigger level for the State. After the end of 13 weeks in the high unemployment period, a State may drop to not being in a high unemployment period, if the trigger level dictates this change.

##### 2. Not in a High Unemployment Period.

If the requirements of the high unemployment period are met with respect to a State not in a high unemployment period, it will move to the higher period at any time, subject to the requirements for beginning and ending dates of periods. (See Sections B and C above.)

#### E. Trigger Freeze.

The data for the EUC trigger for any one week or month will be frozen as published for purposes of the EUC program even though the data used to compute the values may be subsequently revised.

#### F. EUC Trigger Notice.

##### 1. Publication and Distribution.

The EUC trigger notice will be published by the U.S. Department of Labor, Unemployment Insurance Service, each Friday. It will be Faxed to the Regional Offices of the Employment and Training Administration (ETA). Regional Offices will then Fax the triggers to their States.

Thus, two separate trigger notices will be produced, one for the permanent EB program and another for the temporary EUC program. Both will be published on the same day of the week, and they will be distributed at the same time.

##### 2. Trigger Notice Format.

The EUC trigger notice will display, by State, the level for the AIUR and MTUR. It will show how many weeks are currently available in each State. The beginning date of this period and the date of the 13th week will be displayed.

In addition, the national seasonally adjusted total unemployment rates (TUR) for the applicable two months will be shown. The change to a 7-percent period or to 6.8-percent period begins with the second week after the first for which rates are published. Therefore, the TURs shown will have the appropriate lag.

##### G. Computation of Triggers.

The triggers are to be calculated as follows with all data being rounded to the nearest 1/10th of a percent.

1. *AIUR.* The AIUR will be computed by using data from the ETA 5159 and the ETA 539 reports for the most recent reports which are due. The sum of weeks claimed for the current reportable week and the previous 12 weeks from the ETA 539 is divided by 13. This quantity is then added to the most recent three months of regular State exhaustions from the ETA 5159. This result is then divided by the average 12-month covered figure as reported on the ETA 539 for the current employment reportable week.

##### 2. MTUR.

The average or "mean" total unemployment rate is computed by the Bureau of Labor Statistics using the most recently published data. It is the average of six months of non-seasonally adjusted total unemployment in a State divided by the average labor force for the same six-month period. Two different time periods will be involved for any given trigger report since publication of total unemployment data differs by State according to whether the total unemployment is measured directly from the Current Population Survey (CPS) sample ("direct use States") or by a statistically-adjusted method ("non-direct use States").



a. *Direct Use States.* The data for the 11 "direct use" States is derived directly from the Current Population Survey sample and is usually published on the first Friday of the month following the month to which the data relates. The direct use States are: California, Florida, Illinois, Massachusetts, Michigan, New Jersey, New York, North Carolina, Ohio, Pennsylvania, and Texas.

b. *Non-Direct Use States.* All other States' data are usually published the second Tuesday of the second month following the month to which the data relates.

### 3. Initial Computation.

Initial trigger data for the beginning of the EUC program have been set in the EUC legislation. For these data:

a. the AIUR uses actual weeks claimed data through September 28, 1991, which was used to project rates through October 19, 1991, while exhaustions were for the months of July, August and September, 1991—where September data had not been reported, estimates were used,

b. the MTUR is for the 6 months ending in August 1991 for the direct use States and in July 1991 for the non-direct use States.

Note that the computations differ from the methodology that will be used prospectively for calculating the EUC trigger. The MTUR was rounded to one decimal place from a MTUR that was taken to two decimal places—resulting in Arizona, Georgia, and North Carolina being rounded up instead of down.

The initial trigger values are listed below.

**Note:** The following Table as issued in GAL 4-92 is no longer accurate. Therefore, the data under each column heading is deleted. See the weekly trigger notice for current data.

INITIAL EMERGENCY UNEMPLOYMENT  
COMPENSATION BENEFIT LEVELS

State	AIUR	MTUR	Available weeks

## III. Procedures for Implementing EUC

### A. Definitions.

1. *Act* means Title I of the Emergency Unemployment Compensation Act of 1991, Public Law 102-164, as amended by Public Laws 102-182 and 102-244, and further amended by P.L. 102-318.

2. *Agreement* means the agreement entered into pursuant to the Act between a State and the Secretary of Labor, under which the State agency makes payments of Emergency Unemployment Compensation in accordance with the Act as interpreted

by the Secretary or the Department of Labor as set forth in these instructions or other instructions issued by the Department.

3. *Period of Eligibility* means, with respect to any individual, the period beginning with the week following the week in which the State entered into an agreement to pay Emergency Unemployment Compensation, or the period beginning on or after November 17, 1991, whichever is the later; and ending with the last week which begins before March 6, 1993; except that an individual shall not have a period of eligibility unless such individual's benefit year ends on or after November 16, 1991, except for individuals subject to the reachback provisions under section 102(f)(3)(A) of the Act who are treated as having a benefit year ending after November 16, 1991.

4. *Emergency Unemployment Compensation* means the compensation payable under the Act, and which is referred to as EUC.

5. To the extent applicable, the following terms have the same meanings as those defined in the Extended Benefit regulations, 20 CFR Part 615:

a. *Base Period* means, with respect to an individual, the base period as determined under the applicable State law for the individual's applicable benefit year.

b. *Benefit Year* means, with respect to an individual, the benefit year as defined in the applicable State law.

c. *Applicable Benefit Year* means, with respect to an individual, the current benefit year if, at the time an initial claim for EUC is filed, the individual has an unexpired benefit year only in the State in which such claim is filed, or, in any other case, the individual's most recent benefit year. For this purpose, the most recent benefit year, for an individual who has unexpired benefit years in more than one State when an initial claim for EUC is filed, is the benefit year with the latest ending date or, if such benefit years have the same ending date, the benefit year in which the latest continued claim for regular compensation was filed.

d. *Compensation* means cash benefits (including dependents' allowances) payable to individuals with respect to their unemployment, and includes regular compensation, additional compensation and extended compensation as defined in this section.

e. *Regular Compensation* means compensation payable to an individual under any State law, and, when so payable, includes compensation payable pursuant to 5 U.S.C. Chapter 85, but does not include extended

compensation or additional compensation.

f. *Extended Compensation* means the extended unemployment compensation payable to an individual for weeks of unemployment which begin in an extended benefit period, under those provisions of a State law which satisfy the requirements of the Federal-State Extended Unemployment Compensation Act of 1970, and, when so payable, includes compensation payable pursuant to 5 U.S.C. Chapter 85, but does not include regular compensation or additional compensation. Extended compensation is referred to as Extended Benefits or EB.

g. *Additional Compensation* means compensation totally financed by a State under its law by reason of conditions of high unemployment or by reason of other special factors, and when so payable includes compensation payable pursuant to 5 U.S.C. Chapter 85.

h. *Secretary* means the Secretary of Labor of the United States.

i. *State* means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

j. *State Law* means the unemployment compensation law of a State approved by the Secretary under Section 3304(a) of the Internal Revenue Code of 1954 (26 U.S.C. 3304(a)).

k. *Applicable State Law* means the State law of the State which is the applicable State for an individual.

l. *Week* means, for purposes of eligibility for and payment of EUC, a week as defined in the applicable State law.

m. *Week of Unemployment* means a week of total, part-total, or partial unemployment as defined in the applicable State law, which shall be applied in the same manner and to the same extent to the EUC program, as if the individual filing a claim for EUC were filing a claim for regular compensation.

n. *Insured Unemployment Rate* means the rate of insured unemployment for a week determined in the same manner as such rate is determined for the purposes of Section 203 of the Federal State Extended Unemployment Compensation Act of 1970.

6. *Adjusted Insured Unemployment Rate* means the adjusted rate of insured unemployment for any period shall be determined in the same manner as the rate of insured unemployment is determined under Section 203 of the Federal-State Extended Unemployment Compensation Act of 1970; except that individuals exhausting their rights to regular compensation during the most



recent 3 calendar months for which data are available before the close of the period for which such rate is being determined shall be taken into account as if they were individuals filing claims for regular compensation for each week during the period for which such rate is being determined.

7. *Total Unemployment Rate* means, with respect to any period, the average unadjusted total rate of unemployment (as determined by the Secretary) for a State for such period. (See also MTUR at II.G.2. of this GAL.

**B. Beginning and Ending of the EUC Program.**

For States which enter into a signed agreement before November 17, 1991, an EUC period of eligibility begins November 17, 1991. The earliest compensable week for which EUC will be payable is the week ending November 23, 1991.

For States which enter into agreements after November 17, 1991, the first compensable week will be the first full week beginning on or after the Sunday which follows the date the agreement was signed.

The EUC program is scheduled to end on March 6, 1993, and no EUC will be paid for any new claim for a week of unemployment which begins after that date. Individuals who became eligible for EUC before March 6, 1993 will continue to be eligible for any week thereafter for which the individual is otherwise eligible for EUC. However, no EUC shall be payable for any week beginning after June 19, 1993.

States may terminate the EUC agreement upon 30 days written notice. The EUC period will end 30 days from the date the State notifies the Secretary of its election to terminate the EUC program. No EUC will be payable for weeks which begin after the date the agreement is terminated. The agreement may also be terminated by the Secretary, as provided in the agreement.

**C. Eligibility Requirements for Emergency Unemployment Compensation.**

**1. Basic Eligibility Requirements.**

To be eligible for a week of Emergency Unemployment Compensation, an individual must:

- a. Have exhausted all rights to regular compensation under the applicable State law,
- b. Have no rights to any compensation with respect to that week under such law or any other State unemployment compensation law, the Railroad Unemployment Insurance Act, or, under any other Federal law administered by the State agency.

An individual will be considered to meet the requirements of the above

paragraph if the week began subsequent to July 3, 1992 and such individual has not filed a claim for regular unemployment benefits to establish a subsequent benefit year which included such week, or

An individual who exhausted his rights to regular compensation for any benefit year before July 3, 1992 and after such exhaustion, such individual was not eligible to receive EUC by reason of being entitled to regular compensation for a subsequent benefit year, and elects to defer his rights to regular compensation for such subsequent benefit year with respect to weeks beginning after July 3, 1992, such an individual is entitled to receive EUC until his rights to EUC are exhausted in respect to the previous benefit year. No EUC is payable for any week the individual is paid any amount as regular compensation.

c. Not be receiving compensation with respect to such week under the unemployment compensation law of Canada,

d. Have a benefit year under the State law which ended on or after November 16, 1991, or, under the reachback provision (Section C. 11, above), after February 28, 1991,

e. Have at least 20 weeks of employment (as defined in State law) during the base period, or during such base period earned its equivalent under State law of at least one and one-half times the high quarter wages, or of forty times the most recent weekly benefit amount. For purposes of this requirement, "weekly benefit amount" means the weekly benefit amount, including dependents' allowances, payable for a week of total unemployment (before any reductions because of earnings, pensions or other requirements) which applied to the most recent week,

f. Have satisfied the requirement of Section 202(a)(4) of the Federal-State Extended Unemployment Compensation Act of 1970, which provides that no disqualification which has been imposed under State law for "voluntary leaving, discharge for misconduct, or refusing suitable employment" will be deemed terminated for the purposes of paying EB (and now EUC) unless the State law requires employment to terminate such disqualification,

g. Have satisfied the requirements of Section 202(a)(3)(A)(ii) and (E) of the Federal-State Extended Unemployment Compensation Act of 1970, which provides that individuals claiming EB (and now EUC) for a week shall be required to actively engage in seeking work during the week he/she is claiming EUC and provide to the State agency

tangible evidence of a systematic and sustained effort to obtain work,

h. Have satisfied any State law disqualification under Section 202(a)(3) of the Federal-State Extended Unemployment Compensation Act of 1970 for failing to actively engage in seeking work or failing to apply for or accept any offer of suitable work by earning not less than four times his/her WBA and is employed during at least four weeks following the week he/she was disqualified (a 4 x 4 disqualification), and

i. Have filed a timely claim for EUC, as determined under the applicable State law except as provided in these operating instructions with regard to the amendments in Pub. L. 102-318.

**Note:** The requirements of Section 202(a)(3) (and corresponding provisions of State law) referenced in paragraphs g. and h. above are not applicable for weeks of unemployment beginning after March 6, 1993.

**2. Determining Exhaustees.**

For an individual to be deemed to have exhausted benefit rights to regular compensation, with respect to any week of unemployment in the individual's eligibility period, either:

a. The individual must have received all regular compensation payable based on employment and/or wages during the applicable base period and have a benefit year ending after February 28, 1991, or

b. The individual's rights to regular compensation have been terminated by reason of the expiration of the benefit year after February 28, 1991, with respect to which such rights existed.

In addition, to be an exhaustee the individual must not have sufficient wages, or employment, or both, on the basis of which a subsequent benefit year could be established in any State that includes such week.

To determine that an individual has no rights to regular compensation or extended compensation, the factors are the same as those used for determining an exhaustee for EB, as specified in 20 CFR part 615. Specifically, an individual is considered to have no rights to benefits if, during a week in his/her eligibility period, the individual received all benefits available under the applicable State law or any other State law (including UCFE and UCX benefits under 5 U.S.C. Chapter 85) after some or all wage credits are canceled, or his/her entitlement to benefits was otherwise totally or partially reduced.

An individual is an exhaustee with respect to an expired benefit year which ends on or after February 28, 1991, and the individual was, therefore, unable to monetarily exhaust his/her remaining



entitlement during a week ending after February 28, 1991, when he/she is precluded from establishing a second (new) benefit year by reason of the requalifying provision in State law which requires earnings after the beginning of the first benefit year or he/she establishes a second benefit year but is suspended indefinitely until he/she has met the requalifying earnings requirements. The individual ceases to be an exhaustee for the purpose of EUC payments with respect to the expired benefit year when he/she satisfies the requalifying earnings requirement and compensation is payable in the new benefit year.

An individual shall be treated as having no rights to benefits even though as a result of a pending appeal with respect to wages or employment or both which were not included in his/her original monetary determination he/she may subsequently be determined to be entitled to more or less compensation. This also applies to an individual who may be denied benefits for certain weeks during the year by reason of a State law seasonal provision but has entitlement to future weeks in the off season.

For an individual who has established a benefit year but during such year his/her wage credits were canceled or the right to regular, additional, or extended compensation was *totally* reduced as the result of a disqualification, he/she too is considered to have no benefit rights to such compensation and is an exhaustee for the purposes of EUC.

In those States which pay additional benefits (AB), it will be necessary to determine if an individual has been paid or is entitled to be paid additional compensation before EUC can be paid. Certain State laws provide for the suspension of the payment of AB when a federally financed program of benefits is payable. In these cases, individuals may be paid EUC in lieu of AB. However, under no circumstances shall EUC and AB (or any other unemployment benefits) be paid for the same week.

Under section 202(c) of the Federal-State Extended Unemployment Compensation Act of 1970, an individual filing for Extended Benefits under the Interstate Benefit Payment Plan from a State which is not in an EB period is eligible for the first two weeks of EB filed from that State and is disqualified for any other benefits in his/her EB account until such time as his/her agent State begins an EB period or until such time as he/she files from a State which is in an extended benefit period. Individuals who were denied extended benefits under this provision shall be

deemed to have no benefit rights to EB and will be eligible for EUC.

Liable State interstate claim units need to monitor the extended benefit trigger status of agent States and be prepared to redetermine EUC claimants' eligibility for extended benefits when an EB period begins in a given agent State. (Also see III.E.6. relating to Interstate Claims.)

*Provided* that, an individual shall be considered to be an exhaustee for the purposes of EUC if the individual had sufficient employment and wages on the basis of which a subsequent benefit year could be established under any State or Federal law after July 3, 1992, and the individual elects not to file a new claim for regular benefits to establish such a subsequent benefit year, after being fully informed of his/her rights, or

An individual who exhausted all rights to regular compensation for any benefit year before July 3, 1992 and after such exhaustion, such individual was not eligible to receive EUC by reason of being entitled to regular compensation for a subsequent benefit year, and elects to defer his rights to regular compensation for such subsequent benefit year with respect to weeks beginning after July 3, 1992 until such individual has exhausted his rights to EUC in respect to the previous benefit year. No payment of EUC may be made for any week for which an individual is paid any amount as regular compensation.

### 3. Determination "Period of Eligibility".

Under Section 106(a)(2) of the Act, an individual's period of eligibility consists of any week which began on or after November 17, 1991, and which (except as provided in section 102(f)(2)) begins before March 6, 1993; except that an individual shall not have any period of eligibility unless his benefit year ends on or after November 16, 1991. However, the reachback provisions permit any individual whose benefit year ended after February 28, 1991 and before the first week following November 16, 1991, to be considered entitled to EUC in the same manner as if such individual's benefit year ended no earlier than the last day of such following week.

This means that State agencies, in determining whether an individual can qualify for a period of eligibility for EUC, must look at the individual's benefit year ending date (BYE). Reading the standard and reachback provisions together, an individual qualifies for EUC if that individual's BYE date is after February 28, 1991, and the individual is otherwise eligible.

If an individual has a BYE date which is on or before February 28, 1991, the individual is not covered by the EUC program, and may not be paid any EUC.

### 4. Work Qualifying Requirements.

For weeks of unemployment beginning before July 3, 1992, [t]he 20 weeks of full-time work or equivalent qualifying requirement for the payment of extended benefits under Section 202(a)(5) of the Federal-State Extended Unemployment Compensation Act of 1970 shall be applied with respect to any individual claiming a week of EUC beginning on or after November 17, 1991. State interpretations on full-time work weeks will apply as in the case of EB.

States which have enacted an equivalent test under their UI laws to the 20 weeks of work (1½ times the high quarter or 40 times the weekly benefit amount) must apply the same equivalency test to an individual claiming EUC.

States must determine a claimant's eligibility under the 20 weeks of work requirement as part of the initial claims process.

*Provided* that effective for weeks of unemployment beginning after July 3, 1992, Section 202(a)(5) of the Federal-State Extended Unemployment Compensation Act of 1970 has been amended to provide for States to utilize one or more specified methods of determining an individual's monetary eligibility for extended benefits (and now EUC):

- a. One and one-half times the high quarter wages; or
- b. Forty times the most recent weekly benefit amount, and if this alternative is adopted, it shall use the weekly benefit amount (including dependents' allowances) payable for a week of total unemployment (before any reductions because of earnings, pensions or other requirements) which applied to the most recent week; or
- c. Twenty weeks of full-time insured employment as defined in the State law.

**Note:** This change shall be applied to all EUC claims "[n]otwithstanding any other provisions of [State or Federal] law."

### 5. Disqualifications Based on Separation from Work.

Section 202(a)(4) of the Federal-State Extended Unemployment Compensation Act of 1970 requires State laws to provide for the termination of disqualifications for voluntary leaving, discharge for misconduct or refusal of suitable work only with subsequent employment before an individual can be eligible for extended benefits. This same provision applies to the payment of EUC. Therefore, any individual who was



denied EB because his/her disqualification was terminated under State law without the required period of employment would similarly be ineligible for EUC.

States which have not paid extended benefits and applied the denial provisions of Section 202(a)(4) of the Federal-State Extended Unemployment Compensation Act of 1970 must review any nonmonetary determination issued to potentially eligible EUC claimants and determine whether they are qualified for EUC under this provision. Employment for the purpose of terminating a disqualification means service performed in an employer-employee relationship as provided in the State law which would requalify an individual on EB.

In no case may a period of reemployment be used to terminate a disqualification for the purpose of paying EUC, unless the State law specifically requires new work to purge this denial of benefits.

#### 6. *Actively Seeking Work Requirement.*

The extended benefit requirement to actively seek work under Section 202(a)(3)(A)(ii) of the Federal-State Extended Unemployment Compensation Act of 1970, is also a condition of eligibility for EUC. In accordance with the provisions of 202(a)(3)(E) of the Federal-State Extended Unemployment Compensation Act of 1970, an individual will be treated as actively engaged in seeking work if:

- a. the individual has engaged in a systematic and sustained effort to obtain work during such week, and
- b. the individual provides tangible evidence to the State agency that he/she has engaged in such an effort during such week.

Any disqualification of an individual for failure to actively seek work during a week in which he/she is claiming EUC will result in a denial of benefits with respect to the week in which such failure occurs and will not end until such individual purges the special disqualification in accordance with Section 202(a)(3)(B) of the Federal-State Extended Unemployment Compensation Act of 1970. The total amount required to be earned to purge this disqualification cannot be less than four times the individual's weekly benefit amount and the work must be performed in four separate weeks.

#### 7. *Suitable Work Provisions.*

The provisions of Section 202(a)(3)(B) of the Federal-State Extended Unemployment Compensation Act of 1970, will be applied to any individual claiming a week of EUC who fails to apply for or accept any offer of suitable

work as defined in Section 202(a)(3)(C) of the Federal-State Extended Unemployment Compensation Act of 1970.

The term "suitable work" means, with respect to any individual claiming EUC, any work which is within such individual's capabilities; except that, if the individual furnishes evidence satisfactory to the State agency that such individual's prospects for obtaining work in his/her customary occupation within a reasonably short period are good, the determination of whether any work is suitable work with respect to such individual shall be made in accordance with the State law applicable to entitlement for regular benefits.

Paralleling the provisions of section 202(a)(3)(D) of the Federal-State Extended Unemployment Compensation Act of 1970, EUC shall not be denied under provisions required by section 202(a)(3)(B) of the Federal-State Extended Unemployment Compensation Act of 1970, to any individual for any week by reason of a failure to accept an offer of, or to apply for, suitable work:

- a. If the gross average weekly remuneration payable to such individual for the work does not exceed the sum of:

- (i) The individual's weekly benefit amount of EUC, plus

- (ii) The amount (if any) of supplemental unemployment benefits (as defined in section 501(c)(17)(D) of the Internal Revenue Code of 1986) payable to such individual for such week,

- b. If the position was not offered to such individual in writing or was not listed with the State employment service,

- c. If such failure would not result in a denial of compensation under the provisions of the applicable State law to the extent that such provisions are not inconsistent with the provisions of subparagraphs (C) and (D) of section 202(a)(3) of the Federal-State Extended Unemployment Compensation Act of 1970, or

- d. If the position pays wages less than the higher of:

- (i) The minimum wage provided by section 6(a)(1) of the Fair Labor Standards Act of 1938, without regard to any exemption, or

- (ii) Any applicable State or local minimum wage.

Detailed guidance on the appropriate application of the active search for work and refusal of suitable work provisions of section 202(a)(3) of the Federal-State Extended Unemployment Compensation Act of 1970 are in 20 CFR 615.2 and .8.

States will use the appropriate provisions of State law when issuing

determinations for EUC which are required by the corresponding provisions of the Federal-State Extended Unemployment Compensation Act of 1970 but such determinations shall not be inconsistent with the Federal law regardless of the particular provisions of State law.

#### 8. *Approval Training.*

In accordance with 20 CFR 615.2(o)(8)(v), any individual who is in approved training as defined under State law (including training under section 236(a) of the Trade Act of 1974), may be exempted from the requirements of law relating to availability for work, active search for work or refusals of referral to or an offer of suitable work.

#### D. *Weekly Benefit Amount.*

##### 1. *Total Unemployment.*

The EUC weekly benefit amount payable to an individual for a week of total unemployment will be equal to the individual's weekly benefit amount for regular compensation (including dependents' allowances) payable during such individual's most recent benefit year. If an individual had more than one weekly benefit amount of regular compensation, the SESA will determine the EUC weekly benefit amount in the same manner that it would determine the weekly extended benefit amount, as prescribed in 20 CFR 615.6.

##### 2. *Partial and Part-Total Unemployment.*

The weekly amount of EUC payable for a week of partial or part-total unemployment will be determined in accordance with the State law applicable to such a week of unemployment.

##### 3. *Persian Gulf Reservists.*

Subject to the provisions of Section 104 of Pub. L. 102-318, the EUC weekly benefit amount of a Persian Gulf Reservist will be not less than the weekly benefit amount to which the individual was entitled for regular compensation, extended compensation, or trade readjustment allowances for the week in which the reservist was called-up to active duty in the Armed Forces. Section 104 of Pub. L. 102-318 is effective for EUC payments for weeks beginning after July 3, 1992.

Therefore, States and cooperating State agencies will make monetary redeterminations on the claims of reservists who have established EUC entitlement before the effective date of Section 104 of Pub. L. 102-318 and who have an EUC monetary balance remaining for a week beginning after the effective date of this Section. The application of this Section to the reservist's EUC claim affects only the computation of the weekly benefit



amount and has no effect on computation of the maximum benefit amount.

**Note:** The application of this section requires SESAs to increase the eligible reservist's EUC weekly benefit amount for all weeks of unemployment beginning after July 3, 1992, but SESAs *shall not* increase the eligible reservist's EUC maximum amount. The result is that the eligible reservist will exhaust EUC entitlement sooner.

The contents of Section 102(b)(1) of the EUC Act and Section 104 of Pub. L. 102-318 do not permit an increase to the reservist's EUC maximum amount. Section 102(b)(1) prescribes that the EUC weekly and maximum amounts are to be based on the claim for regular compensation in respect to the benefit year to which the EUC claim is based. In the application of Section 104 of Pub. L. 102-318, the reservist's EUC claim is based on regular compensation (including UCX) based all or in part on the reservist's Persian Gulf "Federal service" and is not based on the claim in effect at the time of the reservist's call-up to active duty. Section 104 of Pub. L. 102-318 only provides that the reservist's EUC weekly benefit amount be increased, not the reservist's EUC maximum amount. Consequently, there is no statutory authority for an increase in the reservist's EUC maximum amount to effect the application of Section 104 to Persian Gulf Reservists.

#### E. Maximum EUC Payable.

##### 1. Accounts.

The SESA will establish a separate EUC account for each eligible individual. The amount of EUC payable in the individual's account will be the lesser of:

a. *For EUC claims filed for weeks beginning after February 7, 1992 through the week which includes June 13, 1992.*

(i) 130 percent of the total entitlement to regular benefits (including dependents' allowances) payable to the individual with respect to the most recent benefit year, from which the individual received benefits, or

(ii) The maximum EUC payable in the State as prescribed by the applicable limit.

b. *The EUC claims filed for a week beginning after June 13, 1992.*

(i) 100 percent of the total entitlement to regular benefits (including dependents' allowances) payable to the individual with respect to the most recent benefit year, from which the individual received benefits, or

(ii) The maximum EUC payable in the States as prescribed by the applicable limit.

c. *For EUC claims filed for a week after a National 7-percent period is in effect.*

(i) 60 percent of the total entitlements to regular benefits (including dependents' allowances) payable to the individual with respect to the most recent benefit year, from which the individual received benefits, or

(ii) The maximum EUC payable in the State as prescribed by the applicable limit.

d. *For EUC claims filed for a week after a National 6.8-percent period is in effect.*

(i) 50 percent of the total entitlement to regular benefits (including dependents' allowance) payable to the individual with respect to the most recent benefit year, from which the individual received benefits, or

(ii) The maximum EUC payable in the State as prescribed by the applicable limit amount.

#### 2. Maximum EUC Payable in a State—Applicable Limit.

a. *For EUC claims filed for weeks beginning after February 7, 1992 through the week which includes June 13, 1992.*

(i) *Twenty-six weeks.* The maximum amount of EUC payable is up to 26 times the individual's weekly benefit amount, as computed under 20 CFR 615.6 of EUC in all States that are not in a high unemployment period, or

(ii) *Thirty-three weeks.* The maximum amount of EUC payable is up to 33 times the individual's weekly benefit amount, as computed under 20 CFR 615.6 of EUC in all States that are in a high unemployment period.

(iii) *No Reduction after June 13, 1992.* An individual who has established an EUC account effective with respect to a week which ends on or before June 13, 1992, shall not be subject to any reduction in the maximum amount in such account by reason for the amendments to Section 102(b)(2)(A). Any individual whose account was reduced by reason of the prior provisions of clause (ii) of Section 102(b)(2)(A) shall be redetermined and the account restored to the appropriate level as of June 14, 1992.

b. *For EUC Claims Filed for a Week Beginning after June 13, 1992.*

(i) *(Twenty Weeks).* The maximum amount of EUC payable is up to 20 times the individual's weekly benefit amount, as computed under 20 CFR 615.6, in all States that are not in a high unemployment period.

(ii) *Twenty-six Weeks.* The maximum amount of EUC payable is up to 26 times the individual's weekly benefit amount, as computed under 20 CFR 615.6 of EUC in all States that are in a high unemployment period.

c. *For EUC claims filed for weeks after a National 7-percent period is in effect.*

(i) *Ten weeks.* The maximum amount of EUC payable is up to 10 times the individual's weekly benefit amount, as computed under 20 CFR 615.6, in all States that are not in a State "high unemployment" period.

(ii) *Fifteen weeks.* The maximum amount of EUC payable is up to 15 times the individual's weekly benefit amount, as computed under 20 CFR 615.6, in all States that are in a State "high unemployment" period.

d. *For EUC claims filed for weeks after a National 6.8-percent period is in effect.*

(i) *Seven weeks.* The maximum amount of EUC payable is up to 7 times the individual's weekly benefit amount, as computed under 20 CFR 615.6, in all States that are not in a State "high unemployment" period.

(ii) *Thirteen weeks.* The maximum amount of EUC payable is up to 13 times the individual's weekly benefit amount, as computed under 20 CFR 615.6, in all States that are in a State "high unemployment" period.

e. *7-percent Period; 6.8-percent Period.* In no event shall a 7-percent period occur after a 6.8-percent period occurs, and a 6.8-percent period, once begun, shall continue in effect for all weeks thereafter for which benefits are provided under the EUC.

f. *Limitations on Reductions.* In the case of an individual who is receiving EUC for a week preceding the first week for which a reduction applies under paragraphs b., c. or d., such reduction shall not apply to such individual for any week thereafter for which the individual is otherwise eligible for EUC.

g. *Modification to Final Phase-out.* If an individual is receiving EUC for a week prior to or including March 6, 1993, and meets the eligibility requirements of the EUC Act, as amended, the individual shall continue to be paid EUC for any week thereafter for which the individual meets the eligibility requirements of the Act until the individual's account is exhausted or until June 19, 1993. No EUC is payable for any week beginning after June 19, 1993, even if the individual still has a balance.

#### 3. Computation of EUC Payable Based on a New Benefit Year.

During the life of the EUC program, a small number of EUC claimants may establish new benefit years with a new entitlement to regular benefits and again become exhaustees within the meaning of the Act. These individuals' monetary entitlement to EUC will be determined without regard to the amount of EUC they have already received based on a previous benefit year. Although the Act limits the amount of EUC payable during



an individual's period of eligibility, it does not limit the number of eligibility periods an individual may have during the life of the program.

**4. Beginning of an Extended Benefit Period After the Effective Date of the Act.**

a. States may reach an extended benefit "On" trigger after the effective date of the EUC Act. If so, (and if State law permits), the Governor of a State is authorized to and may elect to trigger off an extended benefit period in order to provide payment of EUC to individuals who have exhausted their rights to regular compensation under State law.

If the Governor cannot or does not elect to trigger off EB and an extended benefit period begins, the SESA must, prior to paying EUC for a week of unemployment, determine each person's eligibility for extended benefits, in accordance with State law provisions relating to EB. If an individual has entitlement to extended benefits, such individual is not eligible for EUC. Once an individual has exhausted any entitlement to extended benefits, the individual may receive any remaining balance in his/her EUC account after an appropriate deduction for EB payments received. A new entitlement to EUC is not made since the individual has the same period of eligibility upon which the EUC entitlement was determined.

b. If for any week beginning after March 6, 1993, an extended benefit period is triggered on with respect to a State, individuals claiming benefits in such State for such week and any following week shall be eligible to receive compensation under this Act or (EB) under State law, whichever is greater.

The election by the Governor, as described in paragraph a., is neither authorized nor in effect for any EB period beginning after March 6, 1993.

**5. Governor's Notification to Secretary of Election.**

Within 10 calendar days after the end of any week with respect to which the head of the State agency has determined there is an "On" indicator for the payment of extended benefits in the State, the Governor of a State, if State law permits, shall notify the Department of his/her election to trigger "Off" extended benefits in order to provide payment of EUC in accordance with Section 101(e) of the Act. Such notice shall not become final until such notice is accepted by the Department.

The above notification is separate from the notification requirements of 20 CFR 615.12(e), however, the Department will follow the requirements of 20 CFR 615.13 to announce the "Off" notification and election of the Governor. The State

agency must follow the provisions of 20 CFR 615.13(b) and also 615.13(c), if such is applicable.

**6. Interstate Claims.**

EUC shall be payable to individuals filing under the Interstate Benefit Payment Plan (IBPP) in the same manner and to the same extent that benefits are payable to intrastate claimants, except that both the agent and liable States must have entered into an agreement to administer the EUC program. IB claimants shall receive the maximum duration payable under the liable State law.

The EB provision which limits interstate claimants to two weeks of extended benefits if they file claims in an agent State not in an extended benefit period applies to the payment of EUC if the agent State has not signed or has canceled an agreement to administer EUC. (See III.C.3. of this GAL.)

The liable State must identify and notify all EUC potentially eligible interstate claimants of the beginning of an EUC period in the manner outlined in III.4 of this GAL. The notice (or a separate informational enclosure) should provide sufficient information pertaining to the eligibility requirements to ensure that claimants are informed of their responsibilities as early in their EUC status as possible.

**7. Combined Wage Claims.**

EUC shall be payable to individuals filing under the Interstate Arrangement for Combining Employment and Wages (CWC) in the same manner and to the same extent that benefits are payable to intrastate or interstate claimants. Administrative, entitlement and eligibility requirements and procedures provided in other sections of this GAL also apply to claims filed under the CWC program, except where clearly inconsistent with combined wage procedures (and interstate, when applicable) policies and rules and the specific instructions this GAL.

The following sections provide additional information and procedures that are specific to claims filed under the combined wage program.

**a. Procedures before July 1, 1992.**

When an EUC claim is established, the paying State must notify the transferring State of its potential liability with a Report of Determination of Combined-Wage Claim, Form IB-5 or telecommunicated TC-IB5, as appropriate. The Form IB-5 must be identified as pertaining to an EUC claim. The TC-IB5 must be checked "other."

Unlike prior Federally funded extended compensation programs where the paying State billed all benefits directly to the Federal government, EUC

attributable to State covered wages shall be billed to the transferring State(s) in the same manner as regular or extended benefits. The transferring State will charge the EUCA account.

**b. Procedures on and after July 1, 1992.**

The paying State will bill all benefits paid on or after July 1, 1992, directly to the Federal government. The transferring State will not charge the EUCA account for benefits paid on or after July 1, 1992, by the paying State.

Refer to Attachments B and C of this GAL for benefit financing and reporting instructions, with respect to both the paying and transferring States.

**8. Changes in Account.**

If it is later determined as the result of a redetermination or appeal that an individual was entitled to more or less regular or extended benefits under the State law or under 5 U.S.C. Chapter 85, the individual's status as an exhaustee shall be redetermined as of the new date of the individual's exhaustion, and an appropriate change shall be made in the individual's EUC account. The EUC maximum in a State may change with trigger changes. If the individual is entitled to more EUC as a result of a change in the maximum weeks of EUC payable in the State, the appropriate change shall be made in the individual's EUC account.

**9. Changes Due to provisions in Pub. L. 102-318.**

The EUC maximum amount payable to a claimant may change as the result of the following sections of Pub. L. 102-318, which amend provisions of Pub. L. 102-164 (as amended by Pub. L. 102-182 and Pub. L. 102-244):

- Section 101(b), which amends Section 102(b)(2)(A) of Pub. L. 102-164, as amended;
- Section 202(a)(2)(A), which is applicable to EUC claimants via Section 101(d)(2) of Pub. L. 102-164, as amended.

The application of these sections of Pub. L. 102-318 may result in the issuance of monetary redeterminations changing the maximum amount of EUC payable to a claimant.

**F. Effect of Other UI-Related Federal Programs on Eligibility for EUC.**

**1. Trade Readjustment Allowances (TRA).**

The maximum amount of EUC payable to an individual who is also entitled to TRA shall not be reduced by reason of any TRA entitlement. However, the individual's entitlement to EUC will reduce the individual's maximum amount of "basic" TRA payable if the EUC is payable during the UI benefit period established by or in



effect at the time of the individual's first TRA qualifying separation under the applicable trade adjustment assistance certification issued by this Department. (For the definition of "benefit period," refer to Section 247(15) of the Trade Act of 1974, as amended, rather than the definition of "benefit period" at 20 CFR 617.3(h). If the EUC entitlement occurs during a UI benefit period subsequent to the one in which the individual's first TRA qualifying separation occurred, the maximum amount of "basic" TRA payable *will not* be reduced by the amount of EUC entitlement. In the latter case, however, the individual is not eligible for TRA until EUC entitlement is exhausted.

The provisions of Section 233(d) of the Trade Act of 1974 (relating to reduction of EB entitlement because of the receipt of TRA in the most recent benefit year) are not applicable to determinations of entitlement to EUC.

The controlling guidance and operating instructions for implementing the amendment to Section 231(a)(2) of the Trade Act of 1974 contained in Section 106 of Pub. L. 102-318 are included in GAL 10-92, dated July 6, 1992.

#### 2. Disaster Unemployment Assistance (DUA).

An individual is not eligible for DUA with respect to a week of unemployment under Section 410 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5177) if the individual is eligible to receive EUC for that week.

#### G. UCX Changes and Effect on EUC.

Prior to establishing an EUC claim it shall be determined that an individual is not entitled to have the maximum benefit amount of the parent CXU claim recalculated because of the amendments to the UCX law contained in Section 301 of Pub. L. 102-164. (See GAL 3-92.)

#### H. Claims for Emergency Unemployment Compensation.

##### 1. Intrastate Initial Claims.

In initial claim for EUC shall be filed by an individual with respect to the individual's applicable State and according to the applicable State law on a form, which shall be furnished to the individual by the State agency.

##### 2. Interstate Initial Claims.

Interstate EUC claims are filed on the same forms and in the same manner as interstate claims for EB. Before accepting an initial EUC claim, the agent State must review the claimant's work history, examine potential entitlement and advise the claimant of all filing options. If the claimant has sufficient employment and wages to establish a new benefit year under any State or Federal program or under the combined

wage arrangement, the right to file under the EUC program must be explained. At the time of the initial EUC claim, the agent State will:

a. Complete an Initial Interstate Claim, Form IB-1, check claim type "other" and identify as EUC;

b. Review the claimant's work history and advise the claimant of all filing options;

c. Complete an Interstate Eligibility Review, Form IB-10. During the initial claimstakeing interview, the claimant's occupation shall be assessed and the claimant's jobs prospects shall be classified. Agent States shall use the Jobs Prospects Classification Form used for intrastate claimants or record the necessary information in the "work search plan" area of the Form IB-10. It is important that the agent States explain the claimant's rights and responsibilities under the EUC program for individual's with such classification, although the liable State shall send general information to EUC claimants.

The EUC eligibility requirements are the same as for EB and require the imposition of a 4 x 4 (not a week-to-week) disqualification for failure to engage in an active search for work during a week claimed. For instance, except for attendance in State approved training, jury duty, and hospitalization for an emergency, there are no "good causes" for not actively seeking work.

d. Issue two (2) Continued Interstate Claim, Form IB-2s, identified as "other" "EUC", to each claimant;

e. Transmit a TC-IB1, identified as claim type "other", to the liable State.

##### 3. Intrastate Weeks Claimed.

Claims for payments of EUC for weeks of unemployment shall be filed with respect to the individual's applicable State at the times and in the same manner as claims for regular compensation are filed under the applicable State law, and on forms, which shall be furnished to the individual by the State agency.

##### 4. Interstate Weeks Claimed.

Claims for payments of EUC for weeks of unemployment shall be filed with respect to the individual's applicable State in accordance with the interstate weeks claimed procedures for regular claims and EB. The liable State will issue to each claimant claim certification forms and instructions, and benefit rights information.

The liable State shall follow its EB certification procedures to ensure that claimant's are meeting the "tangible evidence" of a systematic and sustained work search requirements.

The liable State shall request eligibility review interviews for EUC claimants to intervals determined

appropriate. For individuals whose job prospects classification is "good", the liable State should schedule the claimant for interview and possible reclassification if the claimant has not returned to work within a "reasonably short period."

##### 5. Secretary's Standard.

The procedures for reporting and filing claims for EUC shall be consistent with these instructions and the Secretary's "Standard for Claim Filing, Claimant Reporting, Job Finding and Employment Services" (*Employment Security Manual*, Part V, sections 5000 et seq.)

##### I. Determinations of Entitlement: Notices to Individual.

###### 1. Determination of Initial Claim.

The State agency shall promptly, upon the filing of an initial claim for EUC, determine whether the individual is eligible and whether a disqualification applies, and, if the individual is found to be eligible, the weekly and maximum amounts of EUC payable to the individual.

###### 2. Determination of Weekly Claims.

The State agency shall promptly, upon the filing of a claim for a payment of EUC with respect to a week of unemployment, determine whether the individual is entitled to a payment of EUC with respect to such week, and, if entitled, the amount of EUC to which the individual is entitled.

###### 3. Redetermination.

The provisions of the applicable State law concerning the right to request, or authority to undertake, reconsideration of a determination pertaining to regular compensation under the applicable State law shall apply to determinations pertaining to EUC.

###### 4. Notices to Individual.

The State agency shall give notice in writing to the individual of any determination or redetermination of an initial claim and determinations and redeterminations of all weekly claims with respect to weeks of unemployment, and each notice of determination or redetermination shall include such information regarding the determination or redetermination and notice of right to reconsideration or appeal, or both, as is furnished with written notices of determinations and written notices of redeterminations with respect to claims for regular compensation.

###### 5. Promptness.

Full payment of EUC when due shall be made with the greatest promptness that is administratively feasible.

###### 6. Secretary's Standard.

The procedures for making determinations and redeterminations and furnishing written notices of



determinations, redeterminations, and rights of appeal to individuals claiming EUC shall be consistent with the Secretary's "Standard for Claim Determinations-Separation Information" (*Employment Security Manual*, Part V, sections 6010 et seq.)

**J. Appeal and Hearing.**

**1. Applicable State Law.**

The provisions of the applicable State law concerning the right of appeal and fair hearing from a determination or redetermination of entitlement to regular compensation shall apply to determinations and redeterminations of eligibility for or entitlement to EUC.

**2. Rights of Appeal and Fair Hearing.**

The provisions on right of appeal and opportunity for a fair hearing with respect to claims for EUC shall be consistent with these instructions and with sections 303(a)(1) and 303(a)(3) of the Social Security Act (SSA) (42 U.S.C. 503(a)(1) and 503(a)(3)).

**3. Promptness of Appeals Decisions.**

a. Decisions on appeals under the EUC Program shall accord with the Secretary's "Standard for Appeals Promptness-Unemployment Compensation" in 20 CFR Part 650.

b. Any provision of an applicable State law for advancement or priority of unemployment compensation cases on judicial calendars, or otherwise intended to provide for the prompt payment of unemployment compensation when due, shall apply to proceedings involving entitlement to EUC.

**K. Applicability of State Law Provisions.**

Except where inconsistent with this Act and the Federal-State Extended Unemployment Compensation Act of 1970, as amended, the terms and conditions of the State unemployment compensation law which are applicable to claims for and payment of regular compensation in the State, apply to the same extent to claims for, and payment of, EUC in the State, except that any State law provision limiting computation of monetary eligibility to one method under Section 202(a)(5) (20 weeks of work or equivalent), is not applicable for weeks of unemployment beginning after July 3, 1992. More than one of the methods specified in such Section may be utilized for EUC purposes. The provisions of the applicable State law which apply to claims for, and payment of, EUC include but are not limited to:

**1. Claim Filing and Reporting.**

2. Information to individuals, as appropriate,

3. Notices to individuals and employers, as appropriate, including notice to each individual of each

determination and redetermination of eligibility for or entitlement to EUC.

4. Determinations, redeterminations, appeals, and hearings,

5. Disqualification, including disqualifying income provisions,

6. The Interstate Benefit Payment Plan (see also special instructions for interstate claims in section E.6.),

7. The interstate arrangement for combining employment and wages.

**L. Claimstaking Procedures.**

**1. Notification.**

**a. Notification of Potential EUC Claimants.**

The SESA will identify individuals who are potentially eligible for EUC, and provide each such individual with appropriate written notification of his/her potential entitlement to EUC. The liable State will notify its interstate claimants of potential entitlement to EUC.

**b. Notification of Media.**

In order to assure public knowledge of the status of the EUC program, the SESA shall notify all appropriate news media having coverage throughout the State of the beginning of, or changes to, the EUC program. This includes, but is not limited to, changes in benefit levels because of "triggering" up or down; the effects of law changes, such as an extension of the EUC program; and the effects of termination of the program.

2. *Initial Claim.* When an individual files an initial EUC claim, the SESA must:

a. Review eligibility for EUC and make an initial determination of eligibility,

b. Fully inform claimant of rights and responsibilities under the EB provisions, including rights to EUC while not filing a claim to establish regular benefit entitlement, and/or rights to elect to defer rights to regular compensation until exhaustion of EUC,

c. Ensure that the EB provisions with respect to assessing the claimant's prospects for work, are applied,

d. Ensure the individual is registered for referral to "suitable work", as defined for EB, if the individual's prospects for obtaining work in customary occupations are not good.

**3. Notification of Responsibility.**

**a. General EUC Notification to Claimants.**

EUC claimants must be fully informed of their rights and responsibilities under EUC. Specifically, EUC claimants must be informed of the EB eligibility requirements applicable to EUC. The SESA shall follow the requirements set out in 20 CFR 615. However, if the claimant received such information prior to claiming EB, the SESA need only

advise the claimant that the same requirements apply to EUC claims.

To the extent possible, SESAs should provide a notice to any potential EUC claimant prior to entering EUC status.

**b. Claimant Notification—Election to Defer Rights to Regular Compensation in a Subsequent Benefit Year.**

In order to effect the implementation of Section 102(b)(2)(B) of Pub. L. 102-318 for weeks of unemployment beginning after July 3, 1992, the SESAs will provide individuals with a full explanation of their rights to EUC and regular compensation before the individuals elect whether or not to defer their rights to regular compensation until they have exhausted their rights to EUC in respect to the previous benefit year. This explanation shall include the proviso that once the individual makes the election whether or not to defer the rights to regular compensation, that election shall not be retracted by the individual until he/she has exhausted all rights to benefits under the choice made (EUC or regular compensation). This proviso means that, if the individual elects to claim regular compensation in the subsequent benefit year, the individual shall not be eligible to later receive EUC in respect to the previous benefit year. However, this election scenario would not preclude the individual from receiving EUC after exhaustion of all rights to unemployment compensation in respect to the current benefit year. Alternatively, if the individual elects to claim EUC, the individual may be entitled to receive regular compensation in the subsequent (current) benefit year after exhaustion of EUC. However, under no circumstances will an individual receive both EUC and regular compensation for the same week.

SESAs may wish to consider implementing this required notification procedure as part of the SESA's on-going EUC eligibility review program.

(Note: For clarification purposes, the above means, with respect to this paragraph b. (as well as for Section 102(a) of the Unemployment Compensation Amendments of 1992) (Sections I.B.6. and III.C.2.b. (end) of this Attachment A), that an individual may not retroactively retract his/her election to receive EUC for weeks of unemployment that have been paid after the initial election. However, an individual who initially elects to receive EUC in lieu of regular compensation may change his/her election at any time subsequent to the initial election for prospective weeks of unemployment (that is, weeks not yet paid at the time of election), as long as the individual does not receive duplicate payments under different programs for the same week. Further, as an exception to this rule against retroactivity, an



individual's initial election under Section 102(b)(2)(B), if made at the first opportunity given the individual to make the election, shall be made retroactive to all weeks of unemployment beginning after July 3, 1992.)

#### 4. EUC Eligibility Requirements.

##### a. Assessing Job Prospects.

As part of the initial claims process, the SESA must assess a claimant's job prospects. If the SESA has recently classified the claimant's job prospects as "good" or "not good," the SESA need only ascertain that the classification is still valid based on any changes in the claimant's circumstances or the local labor market. In assessing job prospects, the SESA shall refer to and follow the requirements in 20 CFR part 615.

##### b. Applying Active Search for Work Requirements; Referral for Job Placement; Failure to Apply for or Accept Suitable Work.

The extended benefits requirements on active search for work, referral to "suitable work," and the disqualification for failure to apply for or accept suitable work are applicable to claims for EUC. 20 CFR part 615 describes the requirements for administering these provisions. SESAs shall refer to and follow these same requirements for EUC claimants.

**Note:** The amendments made by Section 202(b)(1) of Pub. L. 102-318, which suspend, for the period beginning after March 6, 1993 and before January 1, 1995, the EB active search for work requirements and the requirement for subsequent employment to satisfy a regular compensation denial before an individual may be determined eligible for EB, also apply to any weeks of unemployment for EUC eligibility that overlaps such dates. During such period of time, State law provisions for regular compensation apply to both the EB and EUC programs.

#### 5. Work Registration.

All EUC claimants must be registered for employment with the SESA. Procedures shall be adopted to annotate EUC claim records to ensure that claimstakers know whether EUC claimants have been registered for work and, if not, the claimstakers must refer EUC claimants to the job placement staff for registration for work (i.e., sufficient information must be available to make a job referral). Likewise, the work registration record shall be annotated to show that an individual is an EUC claimant. Also, registration requirements apply to individuals for which the State is acting as an agent State under the IBPP.

It is also important that UI staff coordinate the job prospects classification process with the Job Service staff. This will be necessary to ensure that the Job Service is aware of

an EUC claimant's *current* job prospects classification in order that the work registration record can be updated for claimants with poor prospects of returning to work and that referrals can be made using a wider range of job openings than those related to the EUC claimant's primary DOT code.

#### 6. Documentation and Reporting of Referral Results.

Job placement staff must notify the claims adjudication staff in writing of:

- a. Failure to respond to a mailed call-in for an appointment to which the claimant did not appear,
- b. Refusal of referrals to suitable work, and
- c. Failure to appear for a job interview or refusal of an offer of suitable work.

#### 7. Eligibility Review Program.

It is expected that EUC claimants who have been through an eligibility review will continue to receive services in this program.

#### M. Fraud and Overpayment.

The Act contains specific provisions with respect to fraud and overpayments of EUC.

Provisions of the State law applied to detection and prevention of fraudulent overpayments of EUC will be, as a minimum, commensurate with those applied by the State with respect to regular compensation and which are consistent with the Secretary's "Standard for Fraud and Overpayment Detection" (*Employment Security Manual*, Part V, Sections 7510, et seq.)

#### 1. Fraudulent Claiming of EUC.

Section 105 of the Act provides that, if an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure the individual has received an amount of EUC to which the individual was not entitled, the individual:

- a. shall be ineligible for further EUC in accordance with the provisions of the applicable State unemployment compensation law relating to fraud in connection with a claim for unemployment compensation, and
- b. shall be subject to prosecution under Section 1001 of Title 18, U.S.C.

Provisions of State law relating to disqualification for fraudulently claiming or receiving a payment of compensation shall apply to claims for and payment of EUC.

When a SESA has sufficient facts to make a *prima facie* case under 18 U.S.C. 1001, it will consider referral for criminal prosecution of accordance with the provisions of the Memorandum of

Understanding (MOU) between the Department's Office of Inspector General and the Employment and Training Administration, which was transmitted as an attachment to UIPL 10-87 (also see UIPLs 16-85 and 21-90). If Federal prosecution is recommended, the matter will be referred to the appropriate Regional Office of the U.S. Department of Labor, Office of the Inspector General (OIG).

For those cases not meeting the criteria of referral to the OIG for investigation and prosecution, as outlined in the MOU, or if the OIG does not accept the case for investigation, or it is accepted, but is later returned because the U.S. Attorney declines prosecution, the SESA should refer the case for prosecution under State law provisions.

#### 2. Recovery of Overpayments.

Under Section 105(b) of the Act each State shall require repayment from individuals who have received any payment of EUC to which they are not entitled (whether fraudulent or non-fraudulent), unless such repayment is prohibited by Section 102(b)(2) or Section 202(a)(2)(B) or unless the State, under the optional language of Section 105(b), elects to have a program under which it will waive recovery of overpayments. A State may elect to have an EUC waiver program even if it has no waiver provisions under State law for regular compensation. If the State elects to have an EUC waiver program and has a waiver program under State law, no State law waiver provisions for regular compensation apply to EUC, and the State shall follow the guidelines outlined in this section III.M.2.

The recovery of certain overpayments is now prohibited. On and after July 3, 1992, no recovery of any EUC shall be required under Section 105 if the individual would have been entitled to received such compensation had the amendment made to the EB earnings test applied to all weeks beginning on or before July 3, 1992. Under Section 102(b)(2) overpayments are required to be established; and those overpayments should be written off.

Any SESA electing to have a waiver program may waive recovery of a non-fraudulent EUC overpayment if it determines, in accordance with the guidelines which follow, that—

- a. the payment of such EUC was without fault on the part of the individual, and
- b. such repayment would be contrary to equity and good conscience.

(1) In determining whether fault exists, for purposes of section III.M.2.



above, the following factors shall be considered:

(a) Whether a material statement or representation was made by the individual in connection with the application for EUC that resulted in the overpayment, and whether the individual knew or should have known that the statement or representation was inaccurate.

(b) Whether the individual failed or caused another to fail to disclose a material fact, in connection with an application for EUC that resulted in the overpayment, and whether the individual knew or should have known that the fact was material.

(c) Whether the individual knew or could have been expected to know that the individual was not entitled to the EUC payment.

(d) Whether, for any other reason, the overpayment resulted directly or indirectly, and partially or totally, from any act or omission of the individual or of which the individual had knowledge, and which was erroneous or inaccurate or otherwise wrong.

(e) Whether there has been a determination of fraud under section 105 of the Act (paragraph 1 of this section III.M.).

An affirmative finding on any one of the factors in section III.M.2.b.(1) (a)-(e) above precludes waiver of overpayment recovery.

(2) In determining whether equity and good conscience exists, for purposes of section III.M.2.b. above, the following factors shall be considered:

(a) Whether the overpayment was the result of a decision on appeal, whether the State agency had given notice to the individual that the case has been appealed and that the individual may be required to repay the overpayment in the event of a reversal on appeal, and whether recovery of the overpayment will not cause extraordinary and lasting financial hardship to the individual.

(b) Whether recovery of the overpayment will not cause extraordinary financial hardship to the individual, and there has been no affirmative finding under the preceding paragraph (2)(a) with respect to such individual and such overpayment.

An affirmative finding on either of the foregoing factors, in preceding paragraphs (2)(a) and (2)(b), precludes waiver of recovery of the overpayment.

For the purpose of this paragraph (2), an extraordinary financial hardship shall exist if recovery of the overpayment would result directly in the individual's loss of or inability to obtain minimal necessities of food, medicine, and shelter for a substantial period of time; and an extraordinary and lasting

financial hardship shall be extraordinary as described above and may be expected to endure for the foreseeable future.

In applying this test in the case of attempted recovery by repayment, a substantial period of time shall be 30 days, and the foreseeable future shall be at least three months. In applying this test in the case of proposed recoupment from other benefits, a substantial period of time and the foreseeable future shall be the longest potential period of benefit entitlement as seen at the time of the request for a waiver determination. In making these determinations, the State agency shall take into account all potential income of the individual and the individual's family and all cash resources available or potentially available to the individual and the individual's family in the time period being considered.

(3) Determinations granting or denying waivers of overpayments shall be made only on request for a waiver determination. Such request shall be made on a form which shall be furnished to the individual by the State agency. Notices of determination of overpayments shall include an accurate description of the waiver provisions of this paragraph (2), if the SESA has elected to allow waivers of EUC overpayments.

(4) Unless an EUC overpayment is otherwise recovered, or is waived under paragraph (2) of this section or recovery prohibited, the SESA shall, during the three-year period after the date the individual received the payment of EUC to which the individual was not entitled, recover the overpayment by deductions from any sums payable to the individual under:

(a) The Act and this GAL 4-92 and changes;

(b) Any Federal unemployment compensation law administered by the SESA; or

(c) Any other Federal law administered by the SESA which provides for the payment of any unemployment assistance or an allowance with respect to unemployment.

(5) No single deduction under this section III.M.2., shall exceed 50 percent of the amount otherwise payable to the individual, and when a deduction is made it shall be 50 percent of the amount otherwise payable.

(6) To the extent permitted under State law, an EUC overpayment may be recovered by offset, within the 50 percent and three-year limitations provided in paragraphs (4) and (5) above, from benefits payable under the State unemployment compensation law.

(7) At the end of the three-year limitation, the SESA may remove the overpayment from its accounting record. Although no further active collection efforts by the SESA are required, the SESA shall maintain an administrative record during the subsequent three-year period to provide for possible collection through methods other than offset. After the subsequent three-year period, the SESA may dispose of the overpayment record.

(8) No repayment may be required, and no deduction may be made, under this section III.M.2. until a determination under paragraph 2. of this section by the State agency has been made, notice of the determination and an opportunity for a fair hearing thereon has been given to the individual concerned, and the determination has become final.

(9) EUC overpayment recovery shall be enforced by any action or proceeding which may be brought under State or Federal law, unless recovery of the overpayment is waived or prohibited in accordance with the Act and the instructions in this section III.M.

(10) Overpayments of EUC recovered in any manner shall be deposited into the fund from which payment was made.

(11) If a State has an agreement in effect with the Secretary to implement the cross-program offset provisions of section 303(g)(2) of the SSA, EUC payments shall be used to offset State regular compensation or EB overpayments and State regular compensation or EB payments shall be used to offset EUC overpayments. Determinations under this section III.M.2., shall be subject to the determination and appeal and hearing provisions of section III.I. and J.

(12) An individual who has an overpayment established under paragraph 2. of this section may have the amount of such overpayment restored to the EUC account established for such individual in accordance with the State law for regular compensation. No restoration is permitted nor shall such occur until the determination of overpayment is final in accordance with paragraph (8) of this section.

(13) If the SESA elects to implement an EUC waiver program, it may not put such election into effect unless it previously elected to allow waiver of nonfraudulent EUC overpayments and has published agency instructions on such election.

### 3. Pub. L. 102-318—Prohibition on Recovery of Certain Overpayments.

Sections 102(b)(2)(A) and 202(a)(2)(B) of Pub. L. 102-318 prohibit the enforcement of recovery of certain non-fraudulent overpayments. States are



reminded that these sections *only* apply to outstanding balances of non-fraudulent overpayments as of July 3, 1992. See Sections I.H.1.a. and I.H.3.c..

N. *Payment to States.* (See also Attachment B.)

Under Section 103 of the Act each State which has entered into an agreement to pay EUC will be paid an amount equal to 100 percent of the amount of EUC which is paid to individuals by the State pursuant to the agreement and in full accordance with the Act and these instructions.

Further, no payment shall be made to any State for EUC to the extent the State is entitled to reimbursement under the provisions of any other federal law other than the Act, which shall mean and include Chapter 85 of Title 5 of the U.S.C. This means that States will charge the EUCA account for EUC paid to UCFE or UCX claimants.

1. *Determination and Billing Requirements for CWC Claims Before July 1, 1992.*

The paying State will bill the transferring State its full pro rata share for all EUC paid on CWC claims (excluding UCX and UCFE). Each transferring and paying State will obtain 100 percent reimbursement for its prorated share of EUC paid from the Federal Extended Unemployment Compensation Account (EUCA). In the case of UCFE and UCX regular payments (non EUC), the paying State obtains reimbursement for such payments from the Federal Employees Compensation Account (FECA).

While all EUC will be paid from the EUCA account, general revenue funds will be used to reimburse the EUCA account for benefits where the compensation is payable under chapter 85 of title 5, United States Code (UCFE/UCX), and compensation is payable on the basis of services to which section 3309(a)(1) of the Internal Revenue Code (Federal Unemployment Tax Act (FUTA)) applies, which are benefits payable to State and local government workers and individuals who performed services for a non-profit organization described in section 501(c)(3) of the Internal Revenue Code. Therefore, the transferring State (in the case of State and local government and 501(c)(3) wages) and the paying State (in the case of UCFE/UCX) will utilize the EUCA account for reimbursement of its pro rata share of benefits paid to the above claimants and will break-out the expenditures that need to be charged to general revenue in accordance with the fiscal reporting instructions provided in Attachment B to this GAL.

2. *Determination and Billing Requirements for CWC Claims On and After July 1, 1992.*

Effective after June 30, 1992, the paying State will not bill the transferring State for its full pro rata share for all EUC paid on CWC claims, including UCFE and UCX. Instead, the paying State will bill the Federal Government for sufficient monies to cover its pro rata share and that of the transferring State. See the revised fiscal reporting instructions provided in Attachment B to this GAL.

O. *Reports, Records, and Records Retention.* (See also Attachment C.)

1. *Reports.*

The SESA will maintain EUC claims and payment data (including data on eligibility, disqualification and appeals) as required by the Employment and Training Administration (ETA). The SESA will report such required data as specified in instructions in Attachments B and C to this GAL.

2. *Records.*

Each SESA will make and maintain records pertaining to the administration of the EUC program as the ETA requires, and will make all such records available for inspection, examination, and audit by such Federal officials or employees as the Secretary of Labor or ETA may designate or as may be required by the law.

3. *Disposal of EUC Records.*

Generally the requirements provide for the transfer of the records to State agency accountability 3 years after final action on the claim or in less than the 3-year period if copied by microphotocopy or by an electronic imaging method.

P. *Disclosure of Information.*

Information in records made and maintained by a State agency in administering the Act shall be kept confidential, and information in such records may be disclosed only in the same manner and to the same extent as information with respect to regular compensation and the entitlement of individuals thereto may be disclosed under the applicable State law. This provision on the confidentiality of information obtained in the administration of the Act shall not apply, however, to the U.S. Department of Labor, or in the case of information, reports and studies requested pursuant to section N of these instructions, or where the result would be inconsistent with the Freedom of Information Act (5 U.S.C. 552), the Privacy Act of 1974 (5 U.S.C. 552a) or regulations of the U.S. Department of Labor promulgated thereunder.

Q. *Inviolate Rights to EUC.*

Except as specifically provided in these instructions, the right of

individuals to EUC shall be protected in the same manner and to the same extent as the rights of persons to regular compensation are protected under the applicable State law. Such measures shall include protection of claimants for EUC from waiver, release, assignment, pledge, encumbrance, levy, execution, attachment, and garnishment, or their rights to EUC. In the same manner and to the same extent, individuals shall be protected from discrimination and obstruction in regard to seeking, applying for and receiving any right to EUC.

R. *Applicable Regulations.*

The provisions of the "Lopez Rule" as set out at 20 CFR 617.52(c), shall be applicable to the administration of the Act by the States under their Agreements with the Secretary of Labor. In addition, other regulations of the United States Government that are applicable to Federal financial assistance programs, such as any unemployment compensation program administered by the States, include the Department's regulations at 29 CFR parts 31, 32, 33, 93, 96, 97, and 98, and, in accordance with Part 97, Office of Management and Budget Circular No. A-87 (46 FR 9548) shall be applicable to the administration of this Act.

IV. *Job Placement and Work Test Activities.*

As previously indicated, the objectives of the EUC program are to make timely and accurate benefit payments, to assist in the reemployment of EUC claimants, and to apply the same work test applicable under the extended benefits program. To carry out the reemployment and work test objectives, the following requirements are being established for EUC's eligibility.

A. All EUC claimants whose jobs prospects are classified as "not good" must have an active full registration with the designated State job placement agency. SESAs must ensure that EUC claimants are registered as quickly as is administratively feasible. In all but exceptional cases, the EUC claimant should be registered by no later than the end of the second compensable week.

B. Each State agency shall establish appropriate internal mechanisms and procedures so that all EUC claimants whose prospects for work have been determined to be "not good" are provided at least one reinterview for job placement assistance during the eligibility period—preferably at the outset of the period. The reinterview shall focus on:

1. Reassessment of the claimant's qualifications and updating the



application to reflect all relevant work experience and EUC status,

2. Exposure to and referral of the claimants to all suitable job listings fitting the EB suitable work definition,

3. Referral to a Job Finding Club and other self-directed job search assistance projects in areas where they are operating.

C. SESAs are also to establish procedures for the prompt interchange of information for the adjudication of EUC claims issues regarding:

1. Failure to report for call-in
2. Refusal of referral
3. Failure to report for job interview
4. Refusal of job offer
5. Results of referral to suitable work
6. Able, available, and other related issues.

SESAs are to ensure that the work test is applied to EUC claimants in the same manner as it is applied to EB claimants, and consistent with section 202(a)(3) of the Federal-State Extended Unemployment Compensation Act of 1970.

#### Attachment B—Emergency Unemployment Compensation Fiscal Instructions

##### 1. Requesting EUC (Benefits) and EUC Administrative Funds.

a. *EUC (Benefits)*. State Employment Security Agencies (SESAs) will request funds from the Extended Unemployment Compensation Account (EUCA) to pay EUC. Drawdown procedures are not changed. Funds must be requisitioned via the State Unemployment Data System (SUDS), and will be transferred to State benefit payment accounts via FEDWIRE no later than the next business day after request. The SUDS screen now includes a line titled "Temporary EB" (third line from the top). EUC fund requests must be entered on that line.

States should estimate the amount of EUC they will pay during the periods for which funds are requested and specify that amount in the current requisition. Over and under estimates should be adjusted in later requisitions. States are reminded that SUDS and FEDWIRE provide almost immediate availability of funds. Furthermore, provisions of the Cash Management Improvement Act of 1990 may require the payment of interest to the U.S. Government on Federal funds for the time between receipt and disbursement by the State.

The Funds Accounting Branch in the U.S. Treasury will transfer the EUC portion specified in the requisition from EUCA to the State account in the UTF and wire transfer the total requisition in the usual manner.

Funds to pay EUC benefits authorized by Public Law 102-164, as amended by Public Law 102-182 and Public Law 102-244, except for benefits for employees of non-profit and governmental entities, are paid from Federal unemployment trust funds in EUCA. Funds for benefits for employees of non-profit and governmental entities, and the new EUC benefits authorized by Pub. L. 102-318 will be appropriated from general revenue funds in the U.S. Treasury and transferred to EUCA.

From a State perspective, although the source of funds differs, all EUC benefit funds are withdrawn from EUCA and State drawdown procedures from EUCA are not impacted (except for funds for benefits paid under the interstate arrangement for combining employment and wages [CWC] as addressed below). However, beginning with the July reporting period, States will be required to identify separately on the ETA 2112 EUC payments for weeks of unemployment *attributable to initial claims filed on or before July 4, 1992*, and for weeks of unemployment *attributable to initial claims filed after July 4, 1992* so that the appropriate general revenue reimbursement to EUCA can be estimated and requested. (See Attachment C, Reporting Instructions.)

Under the CWC, a State should include the EUC drawdowns 100 percent of the amount it expects to disburse to claimants (as a paying State) and the amount necessary to reimburse other States (as a transferring State) for benefits paid through June 30, 1992. (Only the paying State will drawdown for CWC EUC benefits paid after June 30, 1992.) All future requisitions must be adjusted for reimbursement received from other States under the CWC program.

b. *EUC Administrative Funds*. UI administrative requirements relating to the processing of EUC workloads will be funded through the contingency funding process (Worksheet UI-3). The Administrative Financing Initiative short-term changes made in FY 1987 to contingency funding standardized the minutes per unit (MPU) values for the broadband workload items for the various UI programs (regular, additional benefits, short-time compensation, extended benefits, and FSC). Therefore, the allocated MPU values apply also to EUC workload, which should be included in the appropriate lines of the regular UI-3 worksheet. Contingency funds provided for EUC through the UI-3 process will cover both operating costs and any start-up costs. Therefore, States should not submit supplement budget

requests for implementing the EUC program.

Funds to pay UI administrative costs related to the processing of EUC workloads resulting from Public Law 102-164 as amended by Public Law 102-182 and Public Law 102-244 are provided through the FY 1992 Labor/HHS Appropriations Act using the new contingency reserve language which made available additional funds automatically based on a formula tied to the Average Weeks of Insured Unemployment (AWIU) level. Funds to pay UI EUC administrative costs resulting from Pub. L. 102-318 are provided through general revenue funds in the U.S. Treasury and appropriated to the Employment Security Administration Account (ESAA) in the Unemployment Trust Fund.

The amount of funds to be transferred from general revenues to the ESAA account will be estimated by the Employment and Training Administration. Thus, even though the funding sources are different, the process is designed to make it transparent to the States. No separate or different reporting or accounting for administrative workload costs associated with this legislation will be required.

The procedures for handling all above-base workload, including that generated by this new legislation, are the same from the States' perspective; administrative costs associated with EUC claims will be paid out of contingency through the regular process. States may request increases in their contingency advances for the 4th quarter, based on the impact of this legislation.

Since both the contingency reserve fund and the "such sums" language in P.L. 102-318 provide for the availability of the necessary funds without going through the Congressional appropriations process, adequate and timely administrative funding is assured, regardless of the workload level.

State agencies will receive additional administrative funds to perform monetary redetermination on current EUC claimants due to a change in trigger status (change to a "high unemployment period") and law changes (e.g., Pub. Law 102-244 and Pub. L. 102-318) through the contingency funding process. Staff years earned for redetermination of EUC claims will be computed by using an MPU value of no more than 20 minutes. States have the option to use a lesser value MPU if they deem appropriate. This information should be included on line 5 of the regular UI-3 worksheet, Section B. States should show this



calculation and the Calculation for UCX redeterminations at the bottom of the additional costs worksheet. Staffyears used for this activity should be included on line 1, Section A.

**2. EUC Reporting Instructions.**

a. *Time Distribution.* Time used for all EUC activities will be charged to appropriate UI time codes, in conjunction with Project Code 210.

b. *Administrative Fund Accounting.* All accounting for administrative resources relating to the EUC program will be recorded in Fund Ledger No. 92102.

**c. Accounting for EUC Payments (Benefits).**

(1) EUC advances to the States' UTF accounts, amounts received as reimbursement from other States for EUC-CWC payments made prior to July 1, 1992, and disbursements for EUC benefit payments will be reported on the monthly ETA 2112. Do not use a separate form for this report. (See Attachment C, Reporting Instructions.) Accurate reporting of advances, reimbursements and payments is important due to the monthly reconciliation of balances with UIS records; balances are subject to constant congressional and public inquiries.

(2) Since all EUC will be funded out of EUC, the Federal Employees Compensation (FEC) Account will not be used to pay UCFE and UCX claimants. Therefore, Federal agencies will not be required to reimburse the Unemployment Trust Fund for EUC paid to Federal employees. The ETA 191 report and UCFE/UCX detailed claimant data provided by States to Federal agencies must exclude EUC.

(3) Reporting instructions in Attachment C to this GAL for the ETA 2112 require States to separate the benefits paid to UCFE and UCX claimants to be billed to Federal agencies from the EUC paid to UCFE and UCX claimants. This distinction is important to the reconciliation of the ETA 2112 and ETA 191 reports. The reporting instructions in Attachment C to this GAL will also give instructions for reporting benefits paid to former employees of State and local government and Section 501(c)(3) non-profit employers.

**Attachment C—Emergency Unemployment Compensation Reporting Instructions**

1. *General.* Data on the Emergency Unemployment Compensation (EUC) program will be reported on forms ETA 207, ETA 218, ETA 227, ETA 5130, ETA 5159, ETA 2112, and ETA 539. Generally, electronic reporting will not be used

because of the short duration of the EUC program. Except for the ETA 2112, [s]eparate paper forms will be labeled "EUC" at the top and mailed or sent using facsimile services to the National Office and a copy of the Regional Office. Unless otherwise specified, definitions of items will follow definitions in the regular program. Due dates will be the same as the regular versions of reports.

Reporting will begin with the first reporting period in which the effective date of the EUC program falls. Reporting for all reports except the ETA 2112 will continue for twelve full months or four full quarters after the last payable week of the EUC program. For those reporting periods in this post-EUC time frame, only reports which have non-zero data need be submitted. Reporting for the ETA 2112 should continue for as long as there is activity.

State agency administrators must assure that the reports provide only EUC data, not data for regular UI activity. In addition, the data should not duplicate any data provided for the regular UI program, except where the work history indicates an actual intrastate or interstate regular claim must be processed in order to determine entitlement because a decision cannot be made upon screening the information available whether a regular claim or EUC claim should be filed. If the result is a determination of ineligibility for regular UI, then an EUC claim may be filed. Reports could properly reflect an initial claim count for each program (See UIPL 9-92, Change 1).

**2. Data Items to be Reported.**

a. *ETA 207.* Report column 1, Total Determination and Redeterminations, for lines 101 through 106. Report also lines 201 and 202, columns 7 through 10; and lines 301 and 302, columns 11 through 16.

b. *ETA 218.* Report line 100, columns 1 through 3. Note that monetary determination here refer to determinations that the claimant meets the EB 20 weeks of work eligibility requirement.

c. *ETA 227.* Report lines 101, Total Fraud Overpayments, and 108, Total Nonfraud Overpayments for columns 1 through 4. Also report all of Section B, Reconciliation of Overpayment Activity. Overpayments for which recovery is prohibited by Section 102(b)(2) or Section 202(a)(2)(B) of Pub. L. 102-318 should be reflected as write-offs on line 205.

d. *ETA 5130.* Report all data elements.

e. *ETA 5159.* For Section A Claims Activities, report initial claims information for columns 1 through 6 for lines 101 through 103. Report eligibility reviews and continued weeks claimed

activity for columns 7 through 12 for lines 201 through 203. The claims information needed for column 10 for lines 201 through 203 will be identified as FSB on the Interstate Statistical Bypass Data Exchange. Report all of Section B, Payment Activities.

(1) *Final Payments.* Because of the multi-tier nature of the EUC program, it is theoretically possible for a claimant to receive a final payment in one tier and, if the claimant's States triggers into a higher tier after his/her exhaustion, receive a subsequent final payment in the next tier. A final payment is to be counted when a claimant receives a final payment and there are no more benefits available at that point in time even through more may become available later.

(2) *First Payments.* A claimant may not receive more than one first payment under EUC.

(3) *Regular ETA 5159 Exhaustion.* The regular program exhaustions will be used to calculate triggers for the EUC program. Exhaustion data need to be available for the publication of the EUC Trigger Notice. Therefore, the timeliness of the regular ETA 5159 becomes even more important than it has been in the past. The due date remains the 15th of the month following the month to which the data relate. The release date for this information is now the 21st of the month, or the first business day after the 21st, following the month to which the data relate.

f. *ETA 2112.* Do not use a separate form for this report. Amounts received as advances for EUC should be reported on line 22 in columns C and E. Amounts received as reimbursement from other States for EUC-CWC payments made prior to July 1, 1992 should be included on either line 24 or 25 in columns C and F with an explanation under "Comments".

Total disbursement for EUC payments are to be included on line 39 in columns C and F with explanations under "Comments" as follows:

1. *Disbursements* for weeks of unemployment attributable to initial claims filed on or before July 4, 1992.

Amounts included on line 39 are to be broken out by four categories and shown in the "Comments" section. For example: "EUC weeks attributable to initial claims filed on or before 7/4/92, line 39: Regular = \$1,473, UCFE = \$452, UCX = \$389, Other = \$122."

"2. *Disbursements* for weeks of unemployment attributable to initial claims filed after July 4, 1992.

Because of the common funding source for all weeks of unemployment attributable to initial claims filed after



July 4, 1992, regardless of program category, a breakout by program for such weeks is not required. Amounts included on line 39 should be noted in the "Comments" section. For example: "EUC weeks attributable to initial claims filed after 7/4/92, line 39=\$1,000,000."

**Note:** Residual activity from previous Federal emergency programs must continue to be reported on line 39 and, therefore, must also be noted in the "Comments" section.

Because of limited space in the comments section of the ETA 2112, clear abbreviations may be used. For example: Ln. 39-EUC on/before 7/4/92: Reg=\$1,473, FE=\$452, X=\$389, Other=\$122; Ln. 39-EUC after 7/4/92: \$1,000,000; Ln.39-FSC: \$107.

g. *ETA 539.* For this report only, data will be reported electronically. Total weeks claimed for State, UCFE, and UCX for the EUC program for the report period will be reported in the comments section and labeled as "EUC" with the number following it. For example: "EUC=239". (The agent weeks claimed information needed for this report will be obtained from the Interstate Statistical Bypass Data Exchange, column labeled FSB.)

3. *Election of EUC in Lieu of Extended Benefits (EB).* States which trigger onto the EB program may elect to pay EUC instead. This election should be expressed in the comments section of the ETA 539. The usual letter from the governor or appropriate State official declaring that the State has triggered onto EB should contain a declaration that EUC will be paid instead of EB.

4. *Transmission.* Forms will be mailed to: U.S. Department of Labor, Employment and Training Administration, Attn: TEURA-Reports, Rm. S-4519, 200 Constitution Avenue, NW., Washington, DC 20210.

Forms may be sent via facsimile in lieu of mailing to 202-523-8506. The cover sheet should indicate delivery to TEURA-Reports.

5. *OMB Approval.* These instructions have been approved by the Office of Management and Budget (OMB) under approval number 1205-0317, with an expiration date of December 31, 1993.

[FR Doc. 92-27398 Filed 11-13-92; 8:45 am]

BILLING CODE 4510-30-M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby

given that a meeting of the Challenge/Advancement Advisory Panel (Challenge Design Review Section) to the National Council on the Arts will be held on December 2, 1992 from 9 a.m.-4:30 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 9 a.m.-10 a.m. The topics will be opening remarks and an overview of Challenge.

The remaining portion of this meeting from 10 a.m.-4:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, this session will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5439.

Dated: November 10, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92-27649 Filed 11-13-92; 8:45 am]

BILLING CODE 7537-01-M

### Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Dance/Music Section) to the National Council on the Arts will be held on November 30, 1992 from 9:15 a.m.-6 p.m. December 1-3 from 9 a.m.-6 p.m., and December 4 from 9

a.m.-5:30 p.m. in room 730 at the Nancy Hanks Center, 1110 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on November 30 from 9:15 a.m.-10:30 a.m. and December 4 from 3 p.m.-3:30 p.m., for opening remarks, general program overview, and policy discussion.

The remaining portions of this meeting on November 30 from 10:30 a.m.-6 p.m., December 1-3 from 9 a.m.-6 p.m., and November 4 from 9 a.m.-3 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5439.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92-27648 Filed 11-13-92; 8:45 am]

BILLING CODE 7537-01-M

### Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Office of Public Partnership Advisory Panel (Local Arts Agencies Section) will be held on December 1, 1992 from 9:15 a.m.-5:30 p.m. and December 2 from 9:15 a.m.-3:30 p.m. in room 527 at the Nancy



Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics will include introductory remarks, application review, and policy discussion.

Any interested person may observe meetings, or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5439.

Dated: November 9, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92-27610 Filed 11-13-92; 8:45 am]

BILLING CODE 7537-01-M

## NUCLEAR REGULATORY COMMISSION

### Memorandum of Understanding Between the Nuclear Regulatory Commission and the Environmental Protection Agency

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of availability of memorandum of understanding.

**SUMMARY:** On March 16, 1992, NRC and the Environmental Protection Agency (EPA) signed a Memorandum of Understanding (MOU) to foster cooperation between the two agencies in protecting public health and safety and the environment on issues relating to the regulation of radionuclides in the environment. The MOU establishes a framework for the agencies to resolve issues of mutual concern and sets forth principles and procedures for avoiding unnecessary duplication of regulatory requirements and focusing priorities on the most significant safety and environmental problems.

**FOR FURTHER INFORMATION CONTACT:** Martin G. Malsch, Deputy General Counsel for Licensing and Regulations,

Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504-1740.

#### SUPPLEMENTARY INFORMATION:

#### Memorandum of Understanding—Guiding Principles for ERA/NRC Cooperation and Decisionmaking

##### Introduction

The Environmental Protection Agency (EPA) and the Nuclear Regulatory Commission (NRC), in recognition of a mutual commitment to the effective and efficient protection of public health and safety and the environment, have developed this Memorandum of Understanding in order to establish a basic framework within which EPA and NRC will endeavor to resolve issues of concern to both agencies that relate to the regulation of radionuclides in the environment.

##### Goal

The goal of this Memorandum of Understanding is to foster cooperation in fulfilling the responsibilities of each agency to ensure protection of the public health and safety and the environment in accordance with existing agency responsibilities and authorities.

##### Principles

EPA and NRC, in carrying out the respective responsibilities of the two agencies in the regulation of radionuclides, will strive to:

1. Base regulatory decisions on a determination that such actions will result in a substantial reduction of significant risk to the public health and safety and the environment, and in making such decisions consider, to the extent permitted by law, the importance of the risk reductions to be achieved when compared to other radiological risks already subject to existing regulations, the overall economic impact on NRC licensees of additional regulatory requirements to achieve such reductions, and pursue the most efficient, cost-effective course in the regulation of those licensees.

2. Focus agency priorities on those significant safety and environmental problems subject to the authority of both agencies that offer the greatest potential for substantial risk reduction;

3. Avoid unnecessary duplicative or piecemeal regulatory requirements for NRC licensees, consistent with the legal responsibilities of the two agencies, and ensure that standards and regulations, when issued, can be effectively implemented; and

4. Effectively and responsibly carry out the provisions of Reorganization

Plan No. 3 of 1970. Under the Plan, EPA issues generally applicable environmental limits on radiation exposure or levels, or concentrations or quantities of radioactive materials, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive materials, and NRC implements these standards by the use of its licensing and regulatory authority

##### Implementation Guidance

##### A. Scope

For certain facilities or materials licensed or regulated by the NRC, EPA is required by statute to develop environmental standards for radionuclides which are applicable directly to NRC-regulated facilities or materials. For example, EPA is required to develop generally applicable environmental standards for offsite releases from radioactive material in high-level waste repositories under the Nuclear Waste Policy Act. For other program activities, such standards are authorized but, depending sometimes on the circumstances, are not legally required. With the exception of Section C, below, this Memorandum of Understanding is intended to address issues associated with both types of standards. Section C applies according to its terms where EPA standards are not legally mandated. This MOU does not apply to matters arising under RCRA or CERCLA.

##### B. General

Each agency will keep the other generally informed of its relevant plans and schedules regarding such activities, will respond to the other agency's requests for information to the extent reasonable and practicable, and will strive to recognize and ameliorate to the extent practicable anticipated problems with regard to implementation and consistency with other program activities.

Each agency will deal with the other in a spirit of cooperation to achieve the goals of this Memorandum of Understanding. Agency management will endeavor, to the maximum possible extent, to resolve informally and in a timely manner those differences identified as a result of the procedures contained in this Memorandum of Understanding, if differences cannot be resolved, the respective General Counsels of each agency will arrange for the matter to be presented by the necessary parties to the heads of both agencies for resolution.



Each agency will keep the other fully informed of its priorities for the development of regulations and will endeavor to develop a common understanding of the priorities and schedules for resolution, with the highest priorities accorded to initiatives which offer the greatest potential for significant risk reduction.

If both agencies agree, in accordance with these principles and guidance, that duplicative regulation in a particular area is undesirable, but nevertheless is required by law, then the agencies will cooperate in considering and, if appropriate, supporting legislative changes.

#### C. Governing Criteria and Procedures

This Section applies to the issuance of regulations for releases applicable to NRC regulated facilities or activities for releases into the environment of source, byproduct or special nuclear materials under the Clean Air Act. It also applies to the issuance of such regulations under the Atomic Energy Act and other provisions of law which may give rise to duplication of effort and overlapping regulation of NRC regulated facilities or activities, but only to the extent issuance of such standards is authorized but not legally mandated. Subject to the above, EPA and NRC agree as follows:

1. *Criteria.* EPA's decisions not to impose emission standards for hazardous air pollutants under the Clean Air Act for NRC licensed materials or facilities will, in accordance with 112(d)(9) of the Clean Air Act, be based upon a determination that NRC's regulatory program provides an ample margin of safety to protect the public health. Similarly, EPA's decisions to impose or not impose other regulations regarding NRC licensed materials or facilities will be based upon a determination as to whether NRC's regulatory program achieves a sufficient level of protection of the public health and environment. This determination may be influenced by particular risk reduction or risk prevention goals being pursued and this Memorandum of Understanding does not reflect agreement on such goals at this time. Ideally, agreement on risk reduction or prevention goals for radionuclides will be reached pursuant to paragraph D. below but in a particular case where EPA and NRC cannot agree on such goals, this Memorandum of Understanding is without prejudice to EPA deciding to proceed with regulation, without NRC concurrence, based upon an EPA inability to find that

NRC's program provides a sufficient level of protection.

EPA and NRC will jointly seek to minimize unnecessary duplication of effort and overlapping regulation of NRC-licensed materials and facilities.

2. *Procedures.* In developing regulations in accordance with its authorities, if EPA, after finding that NRC's regulatory program fails to provide a sufficient level of protection of the public health and safety or the environment, identifies an area where it believes that EPA regulation applicable to NRC licensees regarding radionuclides may be necessary, EPA will, before developing and proposing rules in the Federal Register, informally and promptly inform the NRC of the basis for its position. If NRC believes that such direct regulation of its licensees by EPA is unnecessary, the two agencies will endeavor to resolve any issues, including consideration of information from NRC regarding the level of protection achieved by NRC regulatory programs and any necessary modifications to NRC's regulatory program, so that duplicative regulation and implementation are avoided. Decisions rendered pursuant to this paragraph will fully consider the implementation of existing regulatory programs in assessing the level of protection being achieved by regulated facilities. Final EPA conclusions on whether EPA will impose regulations applicable to NRC-licensed materials or facilities, and final NRC conclusions on whether NRC will develop modifications to its program, will be accomplished in a public process based upon a full and public record. Any decision made pursuant to this memorandum is subject to review and modification based upon actual experience with its implementation.

Similarly, if NRC undertakes the development of new regulations that would affect the level of protection of public health and safety and the environment related to an area where EPA has authority to issue regulations applicable to NRC licensees, or if NRC undertakes any rulemaking or other regulatory activity to fulfill its agreements made pursuant to this Memorandum of Understanding, NRC will promptly and informally notify and consult with EPA before developing and proposing rules in the Federal Register, and before any final decision by the Commission on the proposal.

Where either agency is developing new regulations for radionuclides in an area not covered by an exiting

regulatory program, the agencies will, before proposing new regulations, consult concerning what the proper division of responsibility should be.

#### D. Risk Assessment

In carrying out this Memorandum of Understanding, the agencies will actively explore ways to harmonize risk goals and will cooperate in developing a mutually agreeable approach to risk assessment methodologies for radionuclides.

#### E. Other Provisions

1. Nothing in this Memorandum of Understanding limits the authority of either agency to exercise independently its authorities with regard to matters that are the subject of this Memorandum of Understanding.

2. Nothing in this Memorandum of Understanding shall be deemed to establish any right nor provide a basis for any action, either legal or equitable, by any person or class of persons challenging a government action or a failure to act.

3. This Memorandum of Understanding will remain in effect until terminated by the written notice of either party submitted six months in advance of termination.

Ivan Selin,

*Chairman, U.S. Nuclear Regulatory Commission.*

William K. Reilly,

*Administrator, U.S. Environmental Protection Agency.*

This Memorandum of Understanding was signed by the Chairman of the Nuclear Regulatory Commission and the Administrator of the Environmental Protection Agency on March 16, 1992.

Dated at Rockville, Maryland, this 6th day of November 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

*Secretary of the Commission.*

[FR Doc. 92-27673 Filed 11-13-92; 8:45 am]

BILLING CODE 7590-01-M

## NUCLEAR WASTE TECHNICAL REVIEW BOARD

### Panel on the Engineered Barrier System Visits West Valley Demonstration Project

Pursuant to the Nuclear Waste Technical Review Board's (Board) authority under section 5051 of the Nuclear Waste Policy Amendments Act of 1987 (Public Law 100-203), the Board's Panel on the Engineered Barrier System



will visit the U.S. Department of Energy's (DOE) West Valley Demonstration Project (WVDP) on December 17, 1992. The WVDP is located at 10282 Rock Springs Road, West Valley, New York 14171.

The purpose of the visit, which is open to the public, is to give the Panel insight into the status of plans for ultimate disposal of the spent fuel and high-level radioactive waste located at the WVDP, including plans for pretreatment and immobilization. The visit will begin at approximately 8 a.m. with briefings and discussions on the operations at WVDP. These presentations will last about two hours and will be followed by a tour of the facility that should end at approximately 3 p.m. Lunch will be available for purchase during the tour. WVDP officials recommend arriving at their main gate before 7:45 a.m. for entry procedures and parking.

All who wish to attend the tour must provide the following information to Frank Randall, (703) 235-4473 or FAX (703) 235-4495.

1. Full name (e.g., Frank B. Randall, Jr.)
2. Social security number
3. Country of citizenship (indicate U.S. or actual country)
4. Date and place of birth (non-U.S. citizens only)

Non-U.S. citizens must call or fax their data to Mr. Randall by November 17, 1992. U.S. citizens have until December 8, 1992, to provide the data.

In 1987, Congress established the Board to evaluate the technical and scientific validity of activities undertaken by the DOE under the Nuclear Waste Policy Act of 1982, as amended. Such activities include characterization of Yucca Mountain, Nevada, to determine its suitability as a potential site for the nation's first permanent repository for spent nuclear fuel and defense high-level waste. Some of the high-level waste disposed of at the first repository may come from the WVDP.

For further information, contact Frank Randall, External Affairs, 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209; (703) 235-4473.

Dated: November 9, 1992.

**William D. Barnard,**

*Executive Director, Nuclear Waste Technical Review Board.*

[FR Doc. 92-27637 Filed 11-13-92; 8:45 am]

BILLING CODE 6820-AM-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-31415; File No. SR-DTC-92-11]

### Self-Regulatory Organizations; The Depository Trust Co.; Filing of a Proposed Rule Change Relating to the Elimination of Short Positions

November 6, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on July 15, 1992, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DTC is filing herewith a proposed rule change providing for a procedure to eliminate short positions remaining in a retired participant's account when the retired participant is unable or unwilling to cover the short position. DTC's procedure for covering short positions is attached as Exhibit A.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The purpose of the proposed rule change is to codify existing procedures which have been applied on an *ad hoc* basis in order to eliminate short positions from the accounts of participants that have sought to retire from the DTC system.

The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC since the

proposed rule change will permit DTC to take affirmative steps to resolve, and thereby reduce the risks associated with, outstanding short positions of retiring participants.

##### B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

##### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC's Short Position Advisory Committee, composed of members representing DTC participants, has reviewed the proposed rule change and enthusiastically supports its approval. No official comments have been solicited or received.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).



the principal office of DTC. All submissions should refer to file number SR-DTC-92-11 and should be submitted by December 7, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,  
Deputy Secretary.

1. At DTC's option, DTC could take the following actions to cover the short positions of a Participant that has requested that its account be closed for activity (or for which DTC has ceased to act).

2. Upon receipt of a Participant's request that its account be closed for activity, DTC would notify the Participant in writing that any short position in the Participant's account as of the date its account is closed and any short position created thereafter (e.g. by reason of a late deposit reject) would, absent an arrangement between the Participant and DTC respecting resolution of the short positions, be subject to a buy-in by DTC funded by the short position penalty assessed or to be assessed against the Participant's account.

3. For securities that DTC, in its sole discretion, determines are readily marketable, DTC would buy-in at the current market price (market order), as determined by DTC.

4. Where market action cannot readily be taken, DTC would use other methods, including its Invitation to Cover Short Request (ICSR) function, to cover the short position. With this function, DTC would extend an invitation to tender to Participants that are long in an issue. The initial offering price would be 110% of market value for shorts open more than 30 calendar days. If DTC is unable to purchase the securities at this offering price within a reasonable period of time (as determined by DTC in its sole discretion), the offering price could be increased up to 130% of market value.

5. If DTC is unable to purchase the securities at 130% of market value through ICSR, DTC could, in its sole discretion, elect to move the remaining short positions from the Participant's account to a special depository account. The Participant would be charged 130% of market value and it would have no further obligation to DTC respecting its short position.

[Release No. 34-31421; File No. SR-NYSE-92-24]

**Self-Regulatory Organizations; Filing of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Amendments to Warrants Listing Standards in Para. 703.12 of NYSE Listed Company Manual**

November 9, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 18, 1992, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Paragraph 703.12 of the *NYSE Listed Company Manual* sets forth the current process for listing warrants on the NYSE. The proposed amendments are intended to provide the Exchange with greater flexibility when considering the eligibility for listing new warrant issues.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

**A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

**1. Purpose**

Currently, the warrants listing standards require that each warrant represent the right to purchase at least one share of common stock of a company whose common stock is listed or will be listed concurrent with the warrants.

The proposed amendments would permit the listing of warrants

representing the right to buy more or less than one share of stock or other security of a company if the security is listed or will be listed concurrent with the warrants.

Existing standards limiting a warrant's exercise price to not greater than 25% above the market price at issuance and restricting the warrants to less than 50% of outstanding common stock are to be amended. While these factors will still be considered in determining eligibility for listing, the absolute quantitative standards will be deleted.

**2. Statutory Basis**

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act which, among other things, requires Exchange rules to be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

**B. Self-Regulatory Organization's Statement on Burden on Competition**

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

**C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others**

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited comments from members or other interested parties regarding these changes.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the publication of this notice in the *Federal Register* or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or



(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-92-24 and should be submitted by December 7, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 92-27687 Filed 11-13-92; 8:45 am]  
BILLING CODE 8010-01-M

[Release No. 35-25670]

#### Filings Under the Public Utility Holding Company Act of 1935 ("Act")

November 6, 1992.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 30, 1992, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy

on the relevant applicant(s) and/or declaration(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

#### Allegheny Generating Company (70-7548)

Allegheny Generating Company ("AGC"), 12 East 49th Street, 36th Floor, New York, New York 10017, a subsidiary of Allegheny Power System, a registered holding company, has filed a post-effective amendment to its declaration under sections 6(a) and 7 of the Act and Rule 50(a)(5) thereunder.

By supplemental order dated November 2, 1990 (HCAR No. 25185) ("Order"), AGC was authorized to issue and sell in one or more transactions, from time-to-time through December 31, 1992, an aggregate principal amount not exceeding \$150 million of its medium-term notes ("Notes") with maturities from nine months to ten years. Notes totalling \$37.975 million have been sold pursuant to the Order. AGC requests that the authority previously granted by the Commission be extended to December 31, 1994 with respect to the remaining \$112.025 million of Notes.

#### Central and South West Corporation (70-7767)

Central and South West Corporation ("CSW"), 1616 Woodall Rodgers Freeway, P.O. Box 660164, Dallas, Texas 75266, a registered electric utility holding company, has filed a post-effective amendment to its application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 12(c) of the Act and Rules 42, 45 and 50(a)(5) thereunder.

By order dated October 19, 1990 (HCAR No. 25173) ("October 1990 Order"), CSW was authorized, among other things, to amend the CSW Employee's Thrift Plan to include a leveraged employee stock ownership plan and create a trust ("LESOP Trust"). Further, the LESOP Trust was authorized to purchase, through December 31, 1991, up to \$500 million aggregate principal amount of CSW common stock ("Common Stock") in any combination of the following: (1) In the open market; (2) directly from CSW after CSW purchased Common Stock in the open market; and (3) directly from

CSW, pursuant to further Commission authorization. The October 1990 Order further provided that the LESOP could finance the acquisition of CSW's common stock through the issuance of notes, through December 31, 1991, in an amount not to exceed \$500 million, to CSW or to institutional lenders, which CSW proposed to guarantee. Loans to the LESOP by CSW were authorized in the October 1990 Order to be financed by CSW through the issuance and sale of commercial paper, medium term notes or notes to institutional lenders, through December 31, 1991, in the amount of \$500 million.

By order dated November 7, 1990 (HCAR No. 25187) ("November 1990 Order"), CSW was authorized, pursuant to the third stock purchase option from the October 1990 Order, to sell authorized but unissued shares of Common Stock to the LESOP Trust through a private placement transaction, through December 31, 1991. It was proposed in the November 1990 Order that the sale of the Common Stock would be made pursuant to a stock purchase agreement between CSW and the LESOP trustee.

By order dated December 24, 1991 (HCAR No. 25442), the effectiveness of both the October 1990 Order and the November 1990 Order was extended through December 31, 1992.

CSW now requests authorization to extend, through December 31, 1993, the authority granted in the October 1990 Order and the November 1990 Order.

#### Entergy Corporation 70-7801

Entergy Corporation ("Entergy"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company has filed a post-effective amendment to its application-declaration under sections 9(a), 10 and 12(c) of the Act and Rule 42 thereunder.

By orders dated November 27, 1990 (HCAR No. 25195) and August 3, 1993 (HCAR No. 25597) ("Orders"), the Commission authorized Entergy to acquire up to 18,575,009 shares of its common stock ("Common Stock"), par value \$5.00, in negotiated or open market transactions or through tender offers from time-to-time through December 31, 1992. As of September 30, 1992, 8,985,591 shares of Common Stock have been acquired by Entergy, leaving 9,589,418 shares remaining to be acquired pursuant to the Orders ("Remaining Shares").

Entergy asserts that based on current projections, all of the Remaining Shares will not be acquired prior to December 31, 1992. Therefore, Entergy now proposes to extend its period of



authorization, through December 31, 1994, to acquire the Remaining Shares. Entergy further proposes to acquire for its own account, in negotiated or open market transactions or through tender offers from time to time through December 31, 1994, up to an aggregate amount of 17,513,739 additional shares of Common Stock ("Additional Shares"). The Additional Shares will be acquired under the same terms and conditions as are currently applicable to the acquisition of Common Stock pursuant to the Orders.

**Louisiana Power & Light Company (70-7822)**

Louisiana Power & Light Company, 317 Baronne Street, New Orleans, Louisiana 70112 ("LP&L"), an electric public-utility subsidiary company of Entergy Corporation, a registered holding company, has filed a post-effective amendment under sections 6(a), 7, 9(a), 10, 12(c) and 12(d) of the Act and Rules 42, 44, 50 and 59(a)(5) thereunder to its application-declaration filed with this Commission under sections 6(a), 7, 9(a), 10, 12(c) and 12(d) of the Act and Rules 42, 44, 50 and 50(a)(5) thereunder.

By orders ("Orders") dated March 21, 1991, May 17, 1991, May 29, 1991, July 1, 1991, October 29, 1991, March 6, 1992 and July 16, 1992 (HCAR Nos. 25279, 25314, 25320, 25341, 25398, 25485 and 25584, respectively), the Commission authorized LP&L, among other things, and subject to certain reservations of jurisdiction, through December 31, 1992: (1) To issue and sell not more than \$500 million aggregate principal amount of its first mortgage bonds ("Bonds") with fixed or variable interest and in one or more new series from time-to-time pursuant to competitive bidding; (2) to issue and sell not more than \$200 million aggregate par value of its preferred stock ("Preferred"), cumulative, \$25 par value or \$100 par value, each in one or more new series; (3) to enter into arrangements to reimburse LP&L for the costs of, or to finance, certain solid waste, sewage disposal and/or pollution control facilities by means of issuance by the Parish of St. Charles, Louisiana, of not more than \$200 million principal amount of its tax-exempt revenue bonds ("Tax-Exempt Bonds"); and (4) to use the net proceeds derived from the issuance and sale of Bonds and Preferred, in addition to other available funds, for general corporate purposes and for the acquisition of certain outstanding securities at any time or from time-to-time prior to December 31, 1992, in whole or in part, through tender offer, negotiated, open market or other forms of purchase or otherwise by

means other than redemption, prior to their respective maturities. Furthermore, by public notices dated February 15, 1991 and February 7, 1992 (HCAR Nos. 25259 and 25472, respectively), the Commission authorized LP&L to begin negotiations for a negotiated public offering or private placement of not more than \$500 million aggregate principal amount of its Bonds and not more than \$200 million of its Preferred. Jurisdiction was reserved over LP&L's proposal to: (1) Issue and sell up to \$321 million aggregate principal amount of Bonds under an exception from competitive bidding; (2) issue and sell up to \$115 million of preferred stock under an exception from competitive bidding; and (3) arrange for the issuance of an irrevocable letter of credit and/or secure an insurance policy, either or both in favor of the trustee, for the payments of the principal of and/or premium on one or more series of tax-exempt bonds, which are to be issued and sold by the Parish of St. Charles, Louisiana ("Parish") pursuant to a trust agreement and in connection with the sale and repurchase of certain pollution control facilities at Unit No. 3 of LP&L's Waterford Steam Electric Generating Station in the Parish.

As of October 30, 1992, there remained unissued and unsold: (1) \$231 million aggregate principal amount of Bonds ("Remaining Bonds"); (2) \$28 million aggregate par value of Preferred ("Remaining Preferred"); and \$130 million aggregate principal amount of Tax-Exempt Bonds ("Remaining Tax-Exempt Bonds").

LP&L now proposes: (1) To increase the principal amount of the Remaining Bonds to be issued and sold by \$125 million, to a total of not more than \$356 million; (2) to increase the aggregate par value of the Remaining Preferred to be issued and sold by \$85 million, to a total of not more than \$113 million; and (3) to extend the date through which the Remaining Bonds and Remaining Preferred, including additional amounts thereof as proposed by this post-effective amendment, and the Remaining Tax-Exempt Bonds may be issued and sold to December 31, 1994, in each case under the same terms and conditions and subject to the same limitations and reservations of jurisdiction as are currently applicable to the Bonds, Preferred and Tax-Exempt Bonds; and (4) to extend the date through which LP&L may acquire its outstanding first mortgage bonds, preferred stock and tax-exempt bonds to December 31, 1994. LP&L further requests authorization to begin negotiations, pursuant to an exception

from the requirements of Rule 50, pursuant to subsection 50(a)(5) thereunder, with respect to the terms of any additional series of Bonds or Preferred to be sold by negotiated public offering or private placement. It may do so.

**Energy Initiatives, Inc., et al. (70-8077)**

Energy Initiatives, Inc., One Upper Pond Road, Parsippany, New Jersey 07054 ("EII"), an indirect subsidiary company of General Public Utilities Corporation, a registered holding company, and OLS Acquisition Corporation, One Upper Pond Road, Parsippany, New Jersey 07054 ("OLS Acquisition"), an indirect subsidiary company of EII, have filed a declaration pursuant to section 12(c) of the Act and Rule 46 thereunder.

EII and OLS Acquisition seek authorization for OLS Acquisition to declare an \$880,000 dividend, which would be paid from unearned surplus.

By order dated August 1, 1989 (HCAR No. 24931), the Commission authorized OLS Acquisition to acquire all of the common stock of OLS Energy-Chino, OLS Energy-Camarillo and OLS Energy-Berkeley ("OLS Subsidiaries"). The OLS Subsidiaries are lessees of gas-fired cogeneration facilities located in California. The facilities are qualifying cogeneration facilities under the Public Utility Regulatory Policies Act of 1978. All of the common stock of OLS Acquisition is owned by OLS Power Limited Partnership, a Delaware limited partnership ("OLS Partnership"). EII owns a 50% interest in OLS Partnership through its wholly owned subsidiary company Camchino Energy Corporation (Camchino), of which it is the general and a limited partner.

OLS Acquisition and the individual from whom it acquired the common stock of the OLS Subsidiaries recently concluded various adjustments to the original purchase price. OLS Acquisition consequently has received a distribution of \$880,000 under various escrow arrangements it funded upon the acquisition of the OLS Subsidiaries in 1989.

In order to distribute those funds to the partners of OLS Partnership under the terms of the limited partnership agreement, OLS Acquisition proposes to declare a cash dividend on its common stock to OLS Partnership in the amount of up to \$880,000. At present OLS Acquisition has negative earned surplus. Pursuant to Section 170 of the Delaware General Corporation Law ("GCL"), under which OLS Acquisition is incorporated, OLS Acquisition is allowed nonetheless to declare a



common stock dividend from "surplus" or from net profits from the current and previous fiscal years. Under section 154 of the GCL, "surplus" consists of assets in excess of liabilities and stated capital. On August 31, 1992, OLS Acquisition had \$4,533,533 in "surplus".

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-27688 Filed 11-13-92; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-25669]

### Filings Under the Public Utility Holding Company Act of 1935 ("Act")

November 6, 1992.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 30, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**Entergy Corporation, et al. (70-8059)**

*Notice of Proposal for Combination of Utility Companies; Order Authorizing Solicitation of Proxies*

Entergy Corporation ("Entergy"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company; its

service company subsidiary, Entergy Services, Inc. ("ESI"), 225 Baronne Street, New Orleans, Louisiana 70112; its nuclear power plant operations subsidiary, Entergy Operations, Inc. ("EOI"), Echelon One, 1340 Echelon Parkway, Jackson, Mississippi 39213; and a new Entergy subsidiary, Entergy-GSU Holdings, Inc. ("Holdings"), 225 Baronne Street, New Orleans, Louisiana 70112, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), 12(e), and 13(b) of the Public Utility Holding Company Act of 1935, as amended ("Act") and Rules 45, 50(a)(5), 51, 62, 65, 86, 87, 90, and 91 thereunder.

The electric public utility subsidiaries of Entergy provide retail electric service to approximately 1.7 million customers in an approximately 45,000 square-mile area in central and eastern Arkansas, north-central and south-eastern Louisiana, and western Mississippi, which area includes the cities of New Orleans and Monroe, Louisiana; Jackson, Mississippi; and Little Rock, Arkansas. In addition, one electric public utility subsidiary, New Orleans Public Service, Inc., provides retail natural gas service to approximately 160,000 customers in New Orleans.

The application-declaration requests authorization for the combination of Entergy and Gulf States Utilities ("Gulf States"), a publicly owned electric and gas utility company that is engaged in the generation, transmission, distribution and sale of electric power at retail and wholesale and in the purchase of electric power at wholesale. Gulf States provides retail electric service to approximately 583,000 customers in a 28,000 square-mile area in southern Louisiana and south-eastern Texas, which area largely is adjacent to the Gulf of Mexico. The area also includes Houston, Conroe, Humble, Beaumont and Port Arthur in Texas and Lake Charles and Baton Rouge in Louisiana.

In addition to its principal electric power business, Gulf States produces and sells steam to a large industrial customer in Baton Rouge and purchases and retails natural gas to approximately 84,000 customers in Baton Rouge, Louisiana. For the year that ended on December 31, 1991, 95% of the operating revenues for Gulf States was derived from the electric business, 3% from the steam business and 2% from the natural gas business.

Gulf States wholly owns two additional subsidiaries. First, Varibus Corporation ("Varibus") operates certain intrastate gas pipelines in Louisiana, which pipelines are used primarily to transport fuel to two electric power plants owned by Gulf States. A division of Varibus, Vari-Tech,

markets computer-aided engineering and drafting technologies and related computer equipment and services. The second wholly owned subsidiary of Gulf States, Prudential Oil & Gas, Inc., is presently inactive.

Through its ownership of GSG&T, Inc., which owns the Lewis Creek electric power plant, a 520-MW gas-fired plant leased to and operated by Gulf States, Gulf States is a holding company under the Act. However, it is exempt from regulation thereunder, except with respect to section 9(a)(2), pursuant to section 3(a)(2) and Rule 2.

Holdings was incorporated by Entergy and Gulf States on August 19, 1992 to facilitate the proposed combination, in connection with which Holdings proposes to organize two new wholly owned subsidiaries—ETR Merger Corp., a Florida corporation ("Merger Sub A"), and GSU Merger Corp., a Texas Corporation ("Merger Sub B"). The authorized capital stock of Holdings consists of 500 million shares of common stock, \$0.01 par value, of which 100 shares have been issued to each of Entergy and Gulf States at the price of \$0.01 per share. The authorized capital stock of Merger Subs A and B will consist, in each case, of 100 shares of common stock, without par value, all of which will be issued to Holdings at the price of \$0.01 per share. The combination has been approved by the Boards of Directors of both Entergy and Gulf States.

Entergy and Gulf States entered into an Agreement and Plan of Reorganization dated June 5, 1992 ("Reorganization Agreement"), which provides that, at the Effective Time, which term is defined below, Merger Sub A will be merged into Entergy ("Entergy Merger") and Merger Sub B will be merged into Gulf States ("Gulf States Merger").

In particular, upon the subsequent of either (i) the submission of articles of merger relative to the Entergy Merger to the Florida Department of State in accordance with the laws of Florida or (ii) the issuance of a certificate of merger relative to the Gulf States Merger by the Secretary of State of Texas in accordance with the laws of Texas, which subsequent date shall be the Effective Time, each share of outstanding common stock of Merger Sub A will be converted into one share of common stock, \$5 par value, of Entergy ("Entergy Common Stock"). In addition, each share of outstanding Entergy Common Stock will be converted into one share of Holdings common stock ("Holdings Common Stock").



Also upon the Effective Time, each share of outstanding common stock of Merger Sub B will be converted into one share of common stock, no par value, of Gulf States ("Gulf States Common Stock"). In addition, each share of outstanding Gulf States Common Stock will be converted into (i) the right to receive \$20.00 in cash, subject to adjustment under certain circumstances and subject to an aggregate limitation of \$250 million, or (ii) a determined number of shares of Holdings Common Stock. The price in either event represents a 38% premium over the closing price of Gulf States Common Stock on the New York Stock Exchange on June 5, 1992.

Specifically, the shares of Holdings Common Stock to be received for each share of Gulf States Common Stock will be equal to \$20.00 divided by the average trading price of Entergy common stock for the fifteen-day period prior to the fifth day prior to the Effective Time ("Average Trading Price"). In addition, the price for each share of Gulf States common stock, in cash or Holdings Common Stock, will (i) be increased on the basis of the aggregate amount per share of all cash dividends declared on Entergy Common Stock from and after June 5, 1994 to the Effective Time; (ii) be increased \$.25 per calendar quarter, prorated for a partial quarter, from and after June 5, 1994 to the Effective Time; and (iii) be decreased on the basis of the aggregate amount per share of all cash dividends declared on Gulf States Common Stock from the date of the Reorganization Agreement through the Effective Time.

Based on the 114,055,065 shares of Gulf States Common Stock outstanding on June 30, 1992, the aggregate consideration payable to shareholders of Gulf States Common Stock would be approximately \$2.28 billion.

On the basis of an unadjusted \$20.00 price for each share of Gulf States Common Stock, the aggregate number of shares of Holdings Common Stock to be issued to Gulf States shareholders in connection with the Gulf States Merger would be approximately 67,703,376. That figure assumes that (i) the shareholders of Gulf States Common Stock elect to receive the maximum amount of cash that is payable in the transaction and that (ii) the Average Trading Price is \$30.

Thus, upon the mergers, the shareholders of outstanding Entergy and Gulf States Common Stock will own the outstanding common stock of Holdings. All shares of Holdings Common Stock held by Entergy and Gulf States will be cancelled at the Effective Time. Holdings, moreover, will own the outstanding common stock of Entergy

and Gulf States. Also upon those mergers, Entergy will be merged into Holdings. Holdings will survive that particular merger and will change its name to Entergy Corporation.

In the event that Entergy and Gulf States are unable to secure a determination from the Internal Revenue Service that the above-described transactions will be tax-free under the Internal Revenue Code, Entergy would not be merged into Holdings but would remain a subsidiary of Holdings ("Alternative Structure"). Entergy would continue to own the outstanding common stock of its present subsidiaries. Holdings would change its name to Entergy Corporation and Entergy would be renamed.

After the combination of Entergy and Gulf States, Gulf States will continue to be a subsidiary of Holdings; the present direct and indirect subsidiaries of Entergy will be direct or indirect subsidiaries of Holdings or Entergy; and Holdings will register as a holding company. If the Alternative Structure is utilized, the application-declaration states that Entergy will continue to be a registered holding company under the Act but also will be wholly owned subsidiary of Holdings.

Holdings requests authorization to issue the aggregate amount of Holdings Common Stock required to effect the Entergy Merger and the Gulf States Merger. Based on the unadjusted \$20.00 price for each share of Gulf States Common Stock and on an Average Trading Price (on July 17, 1992) of \$30.00 for each share of Entergy common stock, Holdings will be required to issue between 244,747,868 and 253,081,202 shares of Holdings Common Stock to shareholders of Entergy Common Stock and Gulf States Common Stock, which amount will depend upon the amount of cash, up to \$250 million, paid in the Gulf States Merger.

The exact number of shares to be issued by Holdings will be determined on the basis of (i) the number of shares of Entergy Common Stock and Gulf States Common Stock outstanding prior to the Effective Time; (ii) the Average Trading Price of Entergy Common Stock; (iii) dividends declared on Entergy Common Stock and Gulf States Common Stock; and (iv) the amount of Gulf States Common Stock converted into cash instead of Holdings Common Stock.

Under the Reorganization Agreement, Holdings will authorize and appoint an exchange agent to receive from the shareholders of Gulf States Common Stock their elections of either cash or stock in the Gulf States Merger. To implement the Gulf States Merger and the Entergy Merger, Holdings will make

available to the exchange agent up to \$250 million in cash for shareholders of Gulf States Common Stock who elect to receive cash. Holdings will also make available to the exchange agent enough shares of Holdings Common Stock to permit the exchange agent to distribute the Holdings Common Stock provided for in the Gulf States Merger and the Entergy Merger.

In the case of the Alternative Structure, prior to that distribution, Entergy will make a special cash dividend to its new parent, Holdings, of up to \$250 million to permit Holdings to fund the cash distribution to shareholders of Gulf States Common Stock. Entergy contemplates that payment of the cash portion of the merger consideration will be made from available funds on hand.

It is contemplated that the outstanding shares of Gulf States preferred stock will remain outstanding after the above-described transactions. Gulf States is current with its preferred stock dividend payments and sinking-fund payments ("Preferred Stock Payments").

Holdings has agreed, under the Reorganization Agreement, to indemnify, from and after the Effective Time, each present and former director and officer, specified therein ("Indemnified Party"), of Gulf States and its subsidiaries against all claims and other liabilities based on actions prior to the Effective Time or on transactions contemplated by the Reorganization Agreement. The indemnity will be inapplicable in the event of gross negligence or willful misconduct and unless an Indemnified Party has sought and failed to obtain indemnification from (i) insurance that may be available; or (ii) Gulf States pursuant to an obligation thereof.

The Reorganization Agreement will be submitted to a vote of shareholders of Entergy Common Stock and of Gulf States Common Stock at special meetings after Entergy and Gulf States conduct their respective proxy solicitations pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended, and, with respect to Entergy, Section 12(e) of the Act and Rules 62 and 65 thereunder. Entergy requests authorization to solicit proxies of its shareholders. In addition to personnel at Entergy and ESI, Entergy proposes to retain Morrow & Co., Inc., a proxy solicitation firm, to assist in the solicitation of proxies.

Entergy requests authorization pursuant to Rule 62(d) under the Act to solicit proxies for use at its special shareholders meeting. Pursuant to the business corporation acts of Florida and



Texas, a majority vote of Entergy Common Stock shareholders, as well as a two-thirds vote of Gulf States Common Stock shareholders, are required to approve the Reorganization Agreement. The shareholders of neither corporation are entitled to appraisal rights.

After the combination of Entergy and Gulf States, EOI proposes to assume operational and managerial responsibility for the River Bend nuclear power plant, Unit No. 1 ("River Bend"), which presently is operated by Gulf States. Gulf States owns a 70% undivided interest in River Bend. Cajun Electric Power Cooperative, Inc., a Louisiana electric cooperative ("Cajun"), owns a 30% interest therein. The terms under which EOI will operate and maintain River Bend will be set forth in an EOI-GSU Operating Agreement, which will be substantially identical to operating agreements between EOI and the owners of the four nuclear power plants presently in the Entergy system ("Plant Owners").

The EOI-GSU Operating Agreement will effect no change in the ownership of River Bend. The services thereunder will be provided at cost. Finally, Gulf States will retain control over River Bend budgets and contracts and will continue to provide its allocable share (70%) of the funds required to operate, maintain, and decommission River Bend. Almost all 890 Gulf States employees at River Bend will become EOI employees.

In connection with EOI-GSU Operating Agreement, Holdings proposes to execute a guarantee agreement almost identical to the present guaranty agreements between EOI and the Plant Owners for the benefit of the Plant Owners. Holdings will guarantee to Gulf States the performance by EOI of its financial obligations under the EOI-GSU Operating Agreement if Gulf States continues to meet its payment obligations to EOI thereunder.

EOI and Gulf States also propose a related Support Agreement and a Switchyard and Transmission Interface Agreement, both of which will be similar to like agreements between EOI and the Plant Owners. Under these agreements, Gulf States will provide (i) personnel, supplies, and services for the operation of River Bend; and (ii) access to switchyard facilities at River Bend and personnel, supplies, and services for the operation and maintenance of associated transmission equipment.

Entergy and Gulf States are engaged in discussions with Cajun on operation of River Bend after the acquisition. The application-declaration might be amended to reflect changes in the

proposed EOI agreements in consequence of these discussions. Finally, ESI proposes to provide services to Gulf States at cost under a service agreement similar to those between ESI and other Entergy system companies. Such services will relate to finance, management, accounting, strategic planning, communications, public relations, and tax and statistical services.

Pursuant to Rule 24(c)(1), the application-declaration requests that an order that approves the transactions described herein specify that those transactions shall be carried out in accordance with the terms and conditions of, and for the purposes stated in, the application-declaration, as amended, within twenty-four months of its effective date.

It appears that the application-declaration, to the extent that it relates to the proposed solicitation of proxies, should be permitted to become effective forthwith pursuant to Rule 62.

It Is Ordered, Therefore, that the application-declaration, to the extent that it relates to the proposed solicitation of proxies be, and it hereby is, permitted to become effective forthwith pursuant to Rule 62 and subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-27689 Filed 11-13-92; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

[Notice 92-24]

### Aircraft Accessibility Federal Advisory Committee

**AGENCY:** Department of Transportation (DOT), Office of the Secretary.

**ACTION:** Notice; schedule of committee meeting.

**SUMMARY:** The Department of Transportation gives notice, as required by the Federal Advisory Committee Act (Pub. L. 92-463), of the time and location of the third meeting of the Aircraft Accessibility Federal Advisory Committee.

**DATES:** The third meeting of this Committee is scheduled for Wednesday, December 9, and Thursday, December 10, 1992, in Conference Room 10234 of the Department of Transportation

(Nassif Building), 400 7th Street SW., Washington, DC.

### FOR FURTHER INFORMATION CONTACT:

Nancy Ebersole, Senior Program Analyst, Department of Transportation, Office of Transportation Regulatory Affairs, 400 7th Street, SW., Washington, DC 20590. Telephone (202) 366-4864.

or

Ira Laster, Jr., Executive Director, Aircraft Accessibility Federal Advisory Committee, Department of Transportation, Office of Transportation Regulatory Affairs, 400 7th Street SW., Washington, DC 20590. Telephone (202) 366-4859.

**SUPPLEMENTARY INFORMATION:** The purpose of the Aircraft Accessibility Federal Advisory Committee is to advise the Secretary of Transportation on issues necessary for further rulemaking to implement the Air Carrier Access Act of 1986. The Committee will advise the Department on matters such as:

1. The degree to which it is possible to design for placement in a narrow-body aircraft a toilet that will accommodate persons with disabilities, including those who use wheelchairs;

2. For the various cabin configurations of different aircraft types under 200 seats, what physical layouts are possible to offer passengers at least visual privacy, and the ability to maneuver in the lavatories?

3. What physical layouts are possible which would provide disabled passengers using an on-board chair full maneuvering room inside the lavatory? What layouts would provide partial accessibility (e.g., a privacy area curtain outside the lavatory)?

4. Which designs can be accomplished without the loss of revenue seats? Which designs can be accomplished with only a minimal loss of revenue seats?

5. How would such arrangements affect passenger traffic within the cabin, flight attendant duties in galleys, and the passenger ease of access to the remaining lavatories?

6. How might such arrangements impair safety, if at all?

7. In small planes, where can the on-board chairs be stored?

8. Down to what size airplanes and for what types can accessible lavatory requirements reasonably be imposed?

9. Should any requirements for accessible lavatories be made a function of state length (i.e., range of distances the aircraft usually covers during a flight segment) instead of airplane size, and, if so, for what stage lengths should such



requirements be imposed? How would this approach alter air carriers' operational flexibility?

#### Background

Concurrent with the March 1990 publication of DOT's Air Carrier Access Act rule, the Department issued an Advance Notice of Proposed Rulemaking (ANPRM) seeking comments on specifications for accessible lavatories in narrow-body aircraft. The ANPRM stated that if sufficient information was not received, the Department would bring together aircraft manufacturers, disabled consumers, air carriers, and flight duty personnel to exchange information from which to frame a regulatory requirement.

Comments to the Docket in response to the 1990 ANPRM revealed little agreement among commenters concerning the degree of accessibility that can be achieved in lavatories on narrow-body aircraft. This is a complex, controversial question best answered through structured dialogue between aircraft manufacturers, air carriers, consumers with disabilities, and flight duty personnel.

The Department will use advice provided by the Committee to develop a notice of proposed rulemaking and a final rule.

Issued on November 10, 1992.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 92-27672 Filed 11-13-92; 8:45 am]

BILLING CODE 4910-62-M

#### Aviation Proceedings; Agreements Filed During the Week Ended November 6, 1992

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

*Docket Number:* 48453

*Date filed:* November 2, 1992

*Parties:* Members of the International Air Transport Association

*Subject:*

TC23 Resp/P 0551 dated October 20, 1992

Expedited Europe-SW Pacific r-1 to r-2

TC23 Reso/P 0552 dated October 20, 1992

Expedited Europe-SW Pacific r-4-015v

*Proposed Effective Date:* Expedited December 1/January 1, 1993

*Docket Number:* 48454

*Date filed:* November 2, 1992

*Parties:* Members of the International Air Transport Association

*Subject:*

TC12 Reso/P 1449 dated October 20, 1992

North Atlantic-Mideast (except Israel) r-1- Reso 002x

*Proposed Effective Date:* Expedited December 1, 1992

*Docket Number:* 48455

*Date filed:* November 2, 1992

*Parties:* Members of the International Air Transport Association

*Subject:*

Telex-Mail Vote 599

Rates from Hong Kong to Japan

*Proposed Effective Date:* December 1, 1992

*Docket Number:* 48459

*Date filed:* November 6, 1992

*Parties:* Members of the International Air Transport Association

*Subject:*

TC2 Meet/C 0110 dated October 27, 1992

Minutes and Report of Cargo Rates Board

*Proposed Effective Date:* October 26, 1992

*Docket Number:* 48460

*Date filed:* November 6, 1992

*Parties:* Members of the International Air Transport Association

*Subject:*

TC3 Reso/P 0485 dated September 11, 1992

TC3 Areawide (except U.S. Territories)

*Proposed Effective Date:* April 1, 1993

*Docket Number:* 48461

*Date filed:* November 6, 1992

*Parties:* Members of the International Air Transport Association

*Subject:*

TC12 Reso/P 1436 dated September 22, 1992

Canada-Europe resos R-1 to R-19  
Minutes-TC12 Meet/P 0509 dated  
October 27, 1992

Tables-TC12 Fares 0395 dated  
November 6, 1992

r-1-002

r-2-044j

r-3-054j

r-4-064j

r-5-076jj

r-6-080rr

r-7-092cc

r-8-015v

r-9-071q

r-10-073ss

*Proposed Effective Date:* January 1, 1993

*Docket Number:* 48462

*Date filed:* November 6, 1992

*Parties:* Members of the International Air Transport Association

*Subject:*

Comp Meet/C 0168 dated October 27, 1992

Minutes and Report of Joint Rates Board

*Proposed Effective Date:* October 26, 1992

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 92-27620 Filed 11-13-92; 8:45 am]

BILLING CODE 4910-62-M

#### Federal Aviation Administration

#### General Aviation and Business Airplane Subcommittee of the Aviation Rulemaking Advisory Committee; Meeting

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration General Aviation and Business Airplane Subcommittee of the Aviation Rulemaking Advisory Committee.

**DATES:** The meeting will be held on December 2, 1992, at 9 a.m. Arrange for oral presentations by November 23, 1992.

**ADDRESSES:** The meeting will be held at the General Aviation Manufacturers Association, Suite 801, 1400 K Street, NW., Washington, DC 20005.

#### FOR FURTHER INFORMATION CONTACT:

Ms. Kathy Ball, (AIR-1), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8235.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. II), notice is hereby given of a meeting of the General Aviation and Business Airplane Subcommittee to be held on December 2, 1992, at the General Aviation Manufacturers Association, 1400 K Street, NW., Washington, DC 20005. The agenda will include:

- Report from the Accelerated Stalls Working Group.
- Report from the Fuel Indicators Working Group.
- Report on JAR/FAR 23 Harmonization Working Group.
- Discussion of future activities.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by November 23, 1992, to present oral statements at the meeting. The public may present written



statements to the committee at any time by providing 12 copies to the Executive Director, or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Washington, DC, on November 4, 1992.

**William J. Sullivan,**

*Executive Director, General Aviation and Business Airplane Subcommittee, Aviation Rulemaking Advisory Committee.*

[FR Doc. 92-27683 Filed 11-13-92; 8:45 am]

BILLING CODE 4910-13-M

### **Notice of Intent To Rule on Application To Impose and Use a Passenger Facility Charge (PFC) at San Angelo Mathis Field, San Angelo, TX**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use a PFC at San Angelo Mathis Field under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

**DATES:** Comments must be received on or before December 16, 1992.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. William Perkins, Planning and Programming Branch, ASW-610D, Airports Division, Southwest Region, Fort Worth, Texas 76193-0611.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. John Schwab, Airport Manager, San Angelo Mathis Field at the following address: City of San Angelo, Texas, Mathis Field, 8618 Terminal Circle, San Angelo, Texas 76904.

Comments from air carriers and foreign air carriers may be in the same form as provided to the city of San Angelo, San Angelo Mathis Field, under § 58.23 of FAR part 158.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Perkins, Federal Aviation Administration, Planning and Programming Branch, ASW-610D, Airports Division, Southwest Region, Fort Worth, Texas 76193-0611, (817) 624-5979.

The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use a PFC at San Angelo Mathis Field under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On November 2, 1992, the FAA determined that the application to impose and use the revenue from a PFC submitted by the city of San Angelo was substantially complete within the requirements of Section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 2, 1993.

The following is a brief overview of the application.

Level of the proposed PFC: \$3.00.

Proposed charge effective date: May 1, 1993.

Proposed charge expiration date: November 1, 1998.

Total estimated PFC revenue: \$873,716.00.

Brief description of proposed project(s):

#### **Projects to Impose and Use PFC's**

Overlay and Groove Runway 3-21, South GA Area Pavement Signage Improvements including Distance Remaining Signs, Groove Runway 18-36

Environmental Assessment for Runway Extensions  
Master Plan Update  
Upgrade Existing Runway 18-36 and Taxiway P Lighting System  
Overlay Taxiway C

#### **Projects Only to Impose PFC's**

Perimeter Road  
Extend Runway 36 and Parallel Taxiway (Phase 1) and Runway 3-21  
Relocate ILS/ALS Runway 3  
Land for Runway 18 RPZ  
Security upgrade (FAR Part 107)  
Extend Taxiways, Access Roads and Fencing for General Aviation Development (MP Phase 1)

Proposed class or classes of air carriers to be exempted from collecting PFC's:

Part 135 Air Charters who operate aircraft with a seating capacity of less than 10 passengers.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**" and at the FAA regional Airports office located at: Federal Aviation Administration,

Airports Division, Planning and Programming Branch ASW-610D, 4400 Blue Mound Road, Fort Worth, Texas 76193-0611.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the city of San Angelo.

Issued in Fort Worth, Texas, on November 3, 1992.

**John M. Dempsey,**

*Manager, Airports Division.*

[FR Doc. 92-27682 Filed 11-13-92; 8:45 am]

BILLING CODE 4910-13-M

### **Research and Special Programs Administration**

#### **International Standards on the Transport of Dangerous Goods; Public Meeting**

**AGENCY:** Research and Special Programs Administration (RSPA), Department of Transportation.

**ACTION:** Notice of public meeting.

**SUMMARY:** This notice is to advise interested persons that RSPA will conduct a public meeting (1) to exchange views on proposals submitted to the seventeenth session of the United Nations Committee of Experts on the Transport of Dangerous Goods, and (2) to report the results of the working group of the International Civil Aviation Organization (ICAO) Dangerous Goods Panel (DGP).

**DATES:** December 2, 1992 at 9:30 a.m.

**ADDRESSES:** Room 3200, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Frits Wybenga, International Standards Coordinator, Office of Hazardous Materials Transportation, Department of Transportation, Washington, DC 20590; (202) 366-0656.

**SUPPLEMENTARY INFORMATION:** This meeting will be held in preparation for the seventeenth session of the Committee of Experts on the Transport of Dangerous Goods to be held December 7 to 16, 1992, in Geneva. During this meeting the U.S. position on proposals submitted to the seventeenth session of the Committee will be discussed. Topics to be covered include classification criteria for corrosive substances, classification criteria for substances toxic by oral ingestion, proper shipping names for petroleum substances, multiregulatory harmonization of classification criteria, requirements for intermediate bulk



containers used to transport packing group I substances, classification of specific dangerous goods and other proposed amendments to the United Nations Recommendations on the Transport of Dangerous Goods.

A second purpose for the meeting will be to review the results of the working group of the ICAO Dangerous Goods Panel held from October 5 to 9, 1992. Agreed amendments to the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air will be discussed.

The public is invited to attend without prior notification.

#### Documents

Copies of documents submitted to the seventeenth session of the UN Committee of Experts meeting may be obtained from RSPA for a nominal fee. A listing of these documents is available on the Hazardous Materials Information Exchange (HMIX), RSPA's computer bulletin board. Documents may be ordered by filling out an on-line request form on the HMIX or by contacting RSPA's Dockets Unit (202-366-4453). For more information on the use of the HMIX system, contact the HMIX information center; 1-800-PLANFOR (752-6367); in Illinois, 1-800-367-9592; Monday through Friday, 8:30 a.m. to 5 p.m. Central time.

After the meeting, a summary of the public meeting will also be available from the Hazardous Materials Advisory Council, suite 250, 1110 Vermont Ave., NW., Washington, DC 20005; telephone number (202) 728-1460.

Issued in Washington, DC, on November 9, 1992.

Alan I. Roberts,

*Associate Administrator for Hazardous Materials Safety.*

[FR Doc. 92-27670 Filed 11-13-92; 8:45 am]

BILLING CODE 4910-60-M

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

#### Piedmont Federal Savings Assoc.; Notice of Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in Section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Piedmont Federal Savings Association, Manassas, Virginia, on October 8, 1992.

Dated: November 10, 1992.

By the Office of Thrift Supervision

Nadine Y. Washington,  
*Corporate Secretary.*

[FR Doc. 92-27731 Filed 11-13-92; 8:45 am]

BILLING CODE 6720-01-M

#### Security Federal Savings and Loan Assoc., Jackson, MS; Notice of Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in Section 5 (d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Security Federal Savings and Loan Association, Jackson, Mississippi, on October 16, 1992.

Dated: November 10, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,  
*Corporate Secretary.*

[FR Doc. 92-27730 Filed 11-13-92; 8:45 am]

BILLING CODE 6720-01-M

#### Standard Federal Savings Assoc.; Notice of Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Standard Federal Savings Association, Gaithersburg, Maryland, on October 21, 1992.

Dated: November 10, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,  
*Corporate Secretary.*

[FR Doc. 92-27727 Filed 11-13-92; 8:45 am]

BILLING CODE 6720-01-M

#### Piedmont Federal Savings Bank; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in Section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Piedmont Federal Savings Bank, Manassas, Virginia, OTS No. 2742, on October 8, 1992.

Dated: November 10, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,  
*Corporate Secretary.*

[FR Doc. 92-27732 Filed 11-13-92; 8:45 am]

BILLING CODE 6720-01-M

#### Security Savings and Loan Assoc., Jackson, MS; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(C) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Security Savings and Loan Association, Jackson, Mississippi, OTS No. 6918, on October 16, 1992.

Dated: November 10, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,  
*Corporate Secretary.*

[FR Doc. 92-27728 Filed 11-13-92; 8:45 am]

BILLING CODE 6720-01-M

#### Standard Federal Savings Bank; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owner's Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Standard Federal Savings Bank, Gaithersburg, Maryland, OTS No. 7156, on October 21, 1992.

Dated: November 10, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,  
*Corporate Secretary.*

[FR Doc. 92-27726 Filed 11-13-92; 8:45 am]

BILLING CODE 6720-01-M

[AC-64: OTS No. 7352]

#### Burnett Federal Savings and Loan Asso., Covington, KY; Approval of Conversion Application

Notice is hereby given that on November 6, 1992, the Assistant Director for Supervisory Operations, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of Burnett Federal Savings and Loan Association, Covington, Kentucky, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW, Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, suite 800, Chicago, Illinois 60601-4360.

Dated: November 10, 1992.



By the Office of Thrift Supervision.  
 Nadine Y. Washington,  
*Corporate Secretary.*  
 [FR Doc. 92-27734 Filed 11-13-92; 8:45 am]  
 BILLING CODE 6720-01-M

[AC-62; OTS NO. 3229]

**Community Bank, A Federal Savings Bank, Michigan City, IN; Approval of Conversion Application**

Notice is hereby given that on October 29, 1992, the Assistant Director for Supervisory Operations, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of Community Bank, A Federal Savings Bank, Michigan City, Indiana, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, suite 800, Chicago, Illinois 60601-4360.

Dated: November 10, 1992.  
 By the Office of Thrift Supervision.  
 Nadine Y. Washington,  
*Corporate Secretary.*  
 [FR Doc. 92-27736 Filed 11-13-92; 8:45 am]  
 BILLING CODE 6720-01-M

[AC-63; OTS No. 3229]

**Kankakee Federal Savings and Loan Association, Kankakee, IL; Approval of Conversion Application**

Notice is hereby given that on November 3, 1992, the Assistant Director for Supervisory Operations, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of Kankakee Federal Savings and Loan Association, Kankakee, Illinois, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G

Street, NW., Washington, D.C. 20552, and the Central Regional, Office of Thrift Supervision, 111 East Wacker Drive, suite 800, Chicago, Illinois 60601-4360.

Dated: November 10, 1992.  
 By the Office of Thrift Supervision.  
 Nadine Y. Washington,  
*Corporate Secretary.*  
 [FR Doc. 92-27735 Filed 11-13-92; 8:45 am]  
 BILLING CODE 6720-01-M

[AC-65; OTS No. 3451]

**Morgan County Federal Savings and Loan of Fort Morgan, Fort Morgan, CO; Approval of Conversion Application**

Notice is hereby given that on November 9, 1992, the Assistant Director for Supervisory Operations, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of Morgan County Federal Savings and Loan of Fort Morgan, Fort Morgan, Colorado, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, Irving, Texas 75261-9027.

Dated: November 10, 1992.  
 By the Office of Thrift Supervision.  
 Nadine Y. Washington,  
*Corporate Secretary.*  
 [FR Doc. 92-27733 Filed 11-13-92; 8:45 am]  
 BILLING CODE 6720-01-M

**UNITED STATES INFORMATION AGENCY**

**Culturally Significant Objects Imported for Exhibition; Determination**

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459),

Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "Fables and Fantasies: The Art of Felix Lorient" (see list <sup>1</sup>), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders.

I also determine that the temporary exhibition or display of the listed exhibit objects at the Crocker Art Museum, Sacramento, CA, from on or about November 29, 1992, to on or about January 10, 1993, the Delaware Art Museum, Wilmington, DE, from on or about January 31, 1993, to on or about March 14, 1993, the West Bend Gallery of Fine Arts, West Bend, WI, from on or about April 4, 1993, to on or about May 16, 1993, the Corcoran Gallery of Art, Washington, DC, from on or about June 6, 1993, to on or about August 22, 1993, the Sioux City Art Center, Sioux City, IA, from on or about September 15, 1993, to on or about November 21, 1993, and the Mitchell Museum, Mt. Vernon, IL, from on or about December 11, 1993, to on or about January 16, 1994, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: November 10, 1992.  
 Alberto J. Mora,  
*General Counsel.*  
 [FR Doc. 92-27765 Filed 11-13-92; 8:45 am]  
 BILLING CODE 6230-01-M

<sup>1</sup> A copy of this list may be obtained by contacting Ms. Lorie J. Nierenberg of the Office of the General Counsel of USIA. The telephone number is (202) 619-8975, and the address is U.S. Information Agency, 301 Fourth Street, SW., room 700, Washington, DC 20547.



# Sunshine Act Meetings

Federal Register

Vol. 57, No. 221

Monday, November 16, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at 2:03 p.m. on Tuesday, November 10, 1992, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Reports of the Office of Inspector General.  
Matters relating to the probable failure of certain insured banks.

Recommendation concerning an administrative enforcement proceeding.

Matters relating to the Corporation's assistance agreement with an insured bank.

Matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Stephen R. Steinbrink (Acting Comptroller of the Currency), concurred in by Acting Chairman Andrew C. Hove, Jr., and Mr. Jonathan L. Fiechter, acting in the place and stead of Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, DC.

Dated: November 10, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92-27794 Filed 11-12-92; 10:57 am]

BILLING CODE 6714-01-M

## FEDERAL TRADE COMMISSION

**TIME AND DATE:** 10:00 a.m., Wednesday, November 18, 1992.

**PLACE:** Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

**STATUS:** Open.

**MATTER TO BE CONSIDERED:** Consideration of Proposed Amendments to the Mail Order Trade Regulation Rule.

### CONTACT PERSON FOR MORE INFORMATION:

Bonnie Jansen, Office of Public Affairs: (202) 326-2180. Recorded Message: (202) 326-2711.

Donald S. Clark,

Secretary.

[FR Doc. 92-27790 Filed 11-12-92; 10:46 am]

BILLING CODE 6750-01-M

## TENNESSEE VALLEY AUTHORITY

[Meeting No. 1454]

**TIME AND DATE:** 10 a.m., November 18, 1992.

**PLACE:** TVA Knoxville Office Complex, 400 West Summit Hill Drive, Knoxville, Tennessee.

**STATUS:** Open.

**AGENDA:** Approval of minutes of meeting held on October 21, 1992.

### ACTION ITEMS:

#### New Business

#### B—Purchase Awards

B1. Award of Contract for Continuous Emission Monitoring Systems for All Fossil Plants (Negotiation T2-79072E).

B2. Requisition 26, Request for Term Coal Proposals for John Sevier and Kingston Fossil Plants.

#### C—Energy

C1. Agreement with the Tennessee Valley Public Power Association (TVPPA) Covering Funding of Research and Development Activities.

C2. Supplement to Contract TV-83440V with Performance Controls Company.

C3. Supplement to Contract TV-82909V with B&W Nuclear Service Company.

C4. Supplement to Contract TV-86567V with United Energy Services Corporation.

C5. Supplement to Personal Services Contract TV-85775V with Stone & Webster Engineering Corporation.

## F—Unclassified

F1. Selection of Shell Oil Company as the Coal Gasification Process Vendor for the Coproduction Demonstration Project and a Negotiated License Agreement.

F2. Filing of Condemnation Cases.

F3. Contract with Coopers & Lybrand and Supplement to Contract with Oracle Corporation for Integrated Business Systems Project.

### INFORMATION ITEMS:

1. Memorandum of Understanding with the U.S. Department of Agriculture.

### CONTACT PERSON FOR MORE INFORMATION:

Alan Carmichael, Vice President, Governmental Relations, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 479-4412.

Dated: November 10, 1992.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 92-27774 Filed 11-12-92; 10:45 am]

BILLING CODE 8120-08-M

## UNITED STATES INSTITUTE OF PEACE

### Notice of Meeting

**DATE/TIME:** Thursday and Friday, November 19-20, 1992; 9:00 a.m. to 5:30 p.m.

**LOCATION:** 1550 M Street, NW. (Conference Room, First Floor), Washington, DC.

**STATUS:** (Open Session)—portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. Law 98-525.

**AGENDA:** Approval of minutes of the Forty-Fifth Meeting of the Board of Directors; Chairmans Report; Presidents Report; Program Reports.

**CONTACT:** Mr. Gregory McCarthy, Director, Public Affairs and Information, Telephone: 202-457-1700.

Dated: November 12, 1992.

Ms. Bernice J. Carney,

Director, Office of Administration, United States Institute of Peace.

[FR Doc. 92-27805 Filed 11-12-92; 11:38 am]

BILLING CODE 3155-01-M



# Corrections

Federal Register

Vol. 57, No. 221

Monday, November 16, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Social Security Administration

#### Social Security Administration Procedures Concerning Allegations of Bias or Misconduct by Administrative Law Judges

##### *Correction*

In notice document 92-26342 beginning on page 49186 in the issue of Friday, October 30, 1992, make the following corrections:

1. On page 49186, in the third column, in the paragraph which begins "SSA is committed \* \* \*", in the fourth line, "buy" should read "by".
2. On page 49187, in the second column, in the third full paragraph, in the second line, "with" should read "will".

BILLING CODE 1505-01-D

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

#### 49 CFR Part 172

[Docket No. HM-211; Amdt. Nos. 171-116, 172-127, 173-231, 174-70, 176-31]

RIN 2137-AC16

#### Marine Pollutants

##### *Correction*

In rule document 92-26414 beginning on page 52930 in the issue of Thursday, November 5, 1992, make the following corrections:

##### § 172.101 [Corrected]

1. On page 52935, in the second column, in amendatory instruction 8a. to § 172.101, in the first and second lines, "Marine pollutants, liquid or solid, n.o.s.," should read "*Marine pollutants, liquid or solid, n.o.s.,*".
2. On the same page, in the same column, in amendatory instruction 9 to appendix A to § 172.101, in the first line, "§ 171.101" should read "§ 172.101"; and in the third line, "§ 171.101" should read "§ 172.101".

BILLING CODE 1505-01-D







**Rehabilitation Short-Term Training**

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**Monday  
November 16, 1992**

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**Part II**

**Department of  
Education**

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**Rehabilitation Short-Term Training; Final  
Priorities and Invitation of Applications  
for New Awards for Fiscal Year 1993;  
Notice**



## DEPARTMENT OF EDUCATION

**Rehabilitation Short-Term Training;  
Final Priorities for Fiscal Year 1993****AGENCY:** Department of Education.**ACTION:** Notice of final priorities for fiscal year 1993.

**SUMMARY:** The Secretary announces final priorities for fiscal year 1993 under the Rehabilitation Short-Term Training program. The Secretary takes this action to focus Federal financial assistance on areas of identified national need. These priorities are intended to expand or improve vocational rehabilitation services through (1) enhanced rehabilitation functional assessments and related services for individuals with cognitive disabilities; and (2) training of rehabilitation practitioners and educators on provisions of the Individuals with Disabilities Education Act (IDEA).

**EFFECTIVE DATE:** These priorities take effect either 45 days after publication in the *Federal Register* or later if the Congress takes certain adjournments. If you want to know the effective date of these priorities, call or write the Department of Education contact person.

**FOR FURTHER INFORMATION CONTACT:** Robert Werner, U.S. Department of Education, 400 Maryland Avenue, S.W., room 3322 Switzer Building, Washington, DC 20202-2649. Telephone: (202) 205-8291. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

**SUPPLEMENTARY INFORMATION:** Grants under the Rehabilitation Short-Term Training program are authorized by section 304, title III of the Rehabilitation Act of 1973, as amended. The purpose of this discretionary grant program is to provide Federal support for developing and conducting special seminars, institutes, workshops, and other short-term courses in technical matters pertaining to the delivery of vocational, medical, social, and psychological rehabilitation services.

This program, as well as the final priorities selected for this fiscal year, support AMERICA 2000, the President's strategy for helping the Nation move toward achievement of the National Education Goals. These priorities, by encouraging the development of vocational rehabilitation strategies designed to increase the vocational potential of individuals with disabilities, support National Education Goal Five, which calls for every adult American to

possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. They also support AMERICA 2000's call for transforming America into "a Nation of students."

On July 27, 1992, the Secretary published a notice of proposed priorities for this program in the *Federal Register* (57 FR 33240).

**Note:** This notice of final priorities does not solicit applications. A notice inviting applications under these competitions is published in a separate notice in this issue of the *Federal Register*.

**Analysis of Comments and Changes**

In response to the Secretary's invitation in the notice of proposed priorities, 10 parties submitted comments. An analysis of the comments and of the changes in the priorities since publication of the notice of proposed priorities follows. Please note that this section addresses only those proposed priorities on which substantive comments were received or priorities that have been substantively changed as a result of the Secretary's review. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

**General Comments**

**Comments:** Two commenters supported the priorities but recommended that another priority be added to provide for the training and participation of consumers of rehabilitation services and other members of traditionally underrepresented groups as peer reviewers.

**Discussion:** The Secretary notes the importance of using peer reviewers who are consumers of rehabilitation services, as well as other members of traditionally underrepresented groups. All rosters of potential peer reviews are required to contain the names of qualified disabled individuals and other persons who are members of traditionally underrepresented groups. Persons selected to participate in peer review panels are required to participate in an individual, as well as a group, orientation prior to their participation as members of a peer review panel.

**Changes:** None.

**Comments:** One commenter who supported the priorities recommended that language be added to the priority areas to require that projects disseminate all training materials in alternate media.

**Discussion:** The Secretary notes that selection criteria will require applicants to demonstrate accessibility for, and involvement of, members of traditionally underrepresented groups including disabled persons. In addition, regulations for the Rehabilitation Training Program in 34 CFR 385.42 state that "a set of any training materials developed under the Rehabilitation Training Program must be submitted to any information clearinghouse designated by the Secretary." The Department requires that all materials disseminated by the designated clearinghouse be made available in alternate media.

**Changes:** None.

**Comments:** One commenter recommended that a third priority be established in order to provide training to State rehabilitation personnel in the revised provisions of the Rehabilitation Act as soon as possible following the reauthorization process. The basis for this recommendation is to prevent disabled persons from being denied access to services from State agencies based on inadequate knowledge counselors and other State agency personnel might have regarding changes in statutory requirements.

**Discussion:** The Secretary agrees that it is important that counselors and other State agency personnel be provided with timely and appropriate training regarding changes in the statutory requirements of the Rehabilitation Act. The Department intends to provide that training for State agency personnel following enactment of any amendments to the Rehabilitation Act.

**Changes:** None.

**Absolute Priority 1—Rehabilitation Short-Term Training — Functional Assessment of Individuals with Cognitive Disabilities**

**Comments:** Two commenters, one on behalf of persons with serious and persistent mental illness and the other on behalf of all persons with cognitive disabilities, recommended that the priority also emphasize the use of assistive technology.

**Discussion:** The Secretary believes that the priority as written does not preclude the use of assistive technology.

**Changes:** None.

**Comments:** One commenter noted that rehabilitation professionals have insufficient knowledge about "attention deficit disorder (ADD)" and need training in order to conduct functional assessments and related services for persons with ADD.

**Discussion:** The Secretary agrees that there is insufficient knowledge about



this cognitive disorder among rehabilitation professionals and that individuals with ADD should be included in the population targeted by this priority.

*Changes:* The priority has been revised to add "attention deficit disorder" to the list of cognitive disabilities targeted by this priority.

*Comments:* Two commenters recommended that individuals who do not have cognitive disabilities could benefit from being added to the list of groups targeted for functional assessments.

*Discussion:* The Secretary agrees that certain individuals who do not have cognitive disabilities would benefit from functional assessments, but does not wish to dilute the focus of this priority, which is to train practitioners to assess individuals with cognitive disabilities. It should be noted that many of the Rehabilitation Long-Term Training grants provide a vehicle for a training focus on the functional assessment of individuals who do not have cognitive disabilities.

*Changes:* None.

*Comments:* One commenter requested that the priority include the assessment of the desires of the individual.

*Discussion:* The Secretary believes that an assessment of the desires of any individual with a disability is an integral part of the rehabilitation process, which includes both counseling and testing. Therefore, the Secretary does not believe that it is necessary to change the priority to include this concept. The priority is intended to provide individuals with additional and more accurate information on which to base their goals and objectives.

*Changes:* None.

*Comments:* One commenter requested that the training be competency-based, and that participants be required to demonstrate their mastery and understanding in all training areas.

*Discussion:* The Secretary notes that the selection criteria in 34 CFR 390.30(h) require applicants to present methodology to develop and implement training that can be expected to achieve the stated educational objectives. The Secretary believes that these criteria are sufficient to address the commenters' concerns.

*Changes:* None.

*Comments:* One commenter recommended that grantees work with State agencies that use functional assessment for most of their clients, as well as be required to use the research or project findings from earlier efforts.

*Discussion:* The Secretary does not wish to require an applicant for a grant

under this priority to work with a particular entity or entities, or to direct the efforts of an applicant by citing a specific research or project finding. An applicant may use any relevant data or work closely with any appropriate entity.

*Changes:* None.

#### *Absolute Priority 2—Rehabilitation Short-Term Training— Training Rehabilitation Practitioners and Educators on Provisions of the Individuals with Disabilities Education Act (IDEA)*

*Comments:* One commenter recommended that the transition requirements proposed for inclusion in the revised Rehabilitation Act also be included as a focus for this training.

*Discussion:* The Secretary notes that the priority is directed to training in the transition requirements in IDEA, and not in the reauthorized version of the Rehabilitation Act.

*Changes:* None.

#### **Priorities**

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet one of the following priorities. The Secretary funds under these competitions only applications that meet one of these absolute priorities:

#### *Absolute Priority 1—Functional Assessment of Individuals with Cognitive Disabilities*

##### **Background**

Rehabilitation planning and decision making must be based on valid, relevant information derived from assessments that delineate an individual's strengths and limitations. Various studies funded by the Rehabilitation Services Administration (RSA) (Indices, 1979; Institute on Rehabilitation Issues, 1983; Policy Studies Associates, 1986; and Berkeley Planning Associates, 1989) indicate that a functional assessment approach yields pertinent information that leads to accurate and supportable decisions on eligibility and determinations of severity of handicap. Also, accurate functional assessment improves the formulation of vocational goals and the establishment of intermediate objectives and services to accomplish individualized written rehabilitation programs.

Although considerable instrumentation has been developed for functional assessment, and although vocational rehabilitation (VR) practice now incorporates significant use of the functional assessment approach,

rehabilitation practitioners often have not received specific training to carry out functional assessment (Halpren, A.S., and Fuhrer, M.S., eds., *Functional Assessment in Rehabilitation*, Paul H. Brookes Publishing Co., 1984). The need is particularly acute to train practitioners to assess individuals with cognitive disabilities, including persons with specific learning disabilities, traumatic brain injury, attention deficit disorders, severe and persistent mental illness, and autism (Fifth National Forum on Issues in Vocational Assessment, University of Wisconsin-Stout, 1991). Persons with these disabilities often have functional capacities that are difficult to assess, thus requiring special care in selection of instrumentation and an interdisciplinary approach to interpretation of findings (RSA Program Circular 90-07).

The Secretary also proposes to fund several Special Projects and Demonstrations in FY 1993 that will develop model approaches to functional assessment for individuals with cognitive disabilities. The Secretary will coordinate the oversight and administration of these projects to assure that rehabilitation professionals, educators, and related agencies and organizations derive the maximum benefits from these efforts to improve functional assessment of individuals with cognitive disabilities.

##### **Priority**

##### **Projects must—**

- Develop training to enhance rehabilitation functional assessments and related services provided by practitioners working in public and related nonprofit private agencies to individuals with specific learning disabilities, traumatic brain injury, attention deficit disorders, severe and persistent mental illness, and autism;
- Provide this training for educators who are preparing individuals for careers in rehabilitation and for trainers of personnel working in or with State VR agencies, centers for independent living, client assistance programs, rehabilitation facilities, and community-based programs for individuals with disabilities; and
- Be national in scope and demonstrate potential for replication based on project outcomes through the dissemination of training materials and protocols.



**Absolute Priority 2—Training Rehabilitation Practitioners and Educators on Provisions of the Individuals with Disabilities Education Act (IDEA)**

**Background**

The recently enacted Individuals with Disabilities Education Act, Public Law 101-476, 20 U.S.C. chapter 33, 1990, attempts to address some of the issues relating to the transition of individuals with disabilities from school to work. IDEA has expanded the definition of "transition services" to encompass post-school outcomes, such as competitive integrated employment, supported employment, and independent living. IDEA requires the identification of employment and other post-school adult living objectives in any transition-related planning. IDEA mandates that individualized education plans (IEPs) reflect the nature and scope of interagency linkages and responsibilities.

Educators who are preparing individuals for careers in rehabilitation and trainers of personnel working in or with State VR agencies need to become familiar with these new requirements and modify existing curricula to reflect these new provisions and their impact on VR services. Under IDEA, State VR personnel will be more actively involved in transition planning for students with disabilities.

RSA will coordinate the oversight of this project with the Office of Special Education (OSEP) to assure that the training provided is consistent with the regulations and related guidance and policy materials developed by OSEP for implementation of IDEA.

**Priority**

**Projects must—**

- Develop training on (1) the transition requirements of IDEA and (2) the impact of these new requirements on the provision of vocational rehabilitation services to students with disabilities. The training must focus on the involvement of VR personnel in the development and modification of IEPs and the importance of collaboration between VR counselors and special education teachers in the successful transition of individuals with disabilities from school to work;
- Provide training through seminars or workshops for pre-service educators

and State VR agency personnel on the transition requirements under IDEA; and

- Be national in scope and demonstrate potential for replication based on project outcomes through the dissemination of training materials and protocols.

**Intergovernmental Review**

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

**Applicable Program Regulations:** 34 CFR parts 385 and 390.

**Program Authority:** 29 U.S.C. 774. (Catalog of Federal Domestic Assistance Number 84.246, Rehabilitation Short-Term Training)

**Dated:** October 20, 1992.

**Lamar Alexander,**  
*Secretary of Education.*

[FR Doc. 92-27634 Filed 11-13-92; 8:45 am]

**BILLING CODE 4000-01-M**

**DEPARTMENT OF EDUCATION**

[CFDA No.: 84.246]

**Rehabilitation Training: Rehabilitation Short-Term Training Notice Inviting applications for new awards for fiscal year (FY) 1993**

**Purpose of Program:** This program is designed for the support of special seminars, institutes, workshops, and other short-term courses in technical matters relating to the delivery of vocational, medical, social, and psychological rehabilitation services.

This program supports AMERICA 2000, the President's strategy for moving the Nation toward achievement of the National Education Goals. The final priorities for this program for FY 1993 would advance goal five, which calls for every adult American to possess the knowledge and skills necessary to compete in a global economy and

exercise the rights and responsibilities of citizenship. The Secretary proposes to contribute to the achievement of this goal through training rehabilitation professionals so that they may better assist individuals with disabilities in acquiring the knowledge and skills to obtain employment.

**Eligible Applicants:** State agencies and other public or nonprofit agencies and organizations, including institutions of higher education, are eligible for assistance under the Rehabilitation Short-Term Training program.

**Deadline for Transmittal of Applications:** January 15, 1993.

**Deadline for Intergovernmental Review:** March 16, 1993.

**Applications Available:** November 20, 1992.

**Available Funds:** \$340,000.

**Estimated Average Size of Awards:** \$150,000.

Specific information regarding the estimated range of awards and number of awards appears in the chart in this notice.

**Note:** The Department is not bound by any estimates in this notice.

**Project Period:** Up to 12 months.

**Applicable Regulations:** (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 88; and (b) The regulations for this program in 34 CFR Parts 385 and 390.

**Priorities:** The priorities in the notice of final priorities for this program, as published elsewhere in this issue of the *Federal Register*, apply to these competitions.

**For Applications:** Telephone (202) 205-8327; deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

**FOR FURTHER INFORMATION CONTACT:** Robert Werner, U.S. Department of Education, 400 Maryland Avenue, SW., room 3318, Switzer Building, Washington, DC 20202-2649. Telephone: (202) 205-8291.

**Program Authority:** 29 U.S.C. 774.

**Dated:** November 6, 1992.

**Michael E. Vader, .**

*Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.*



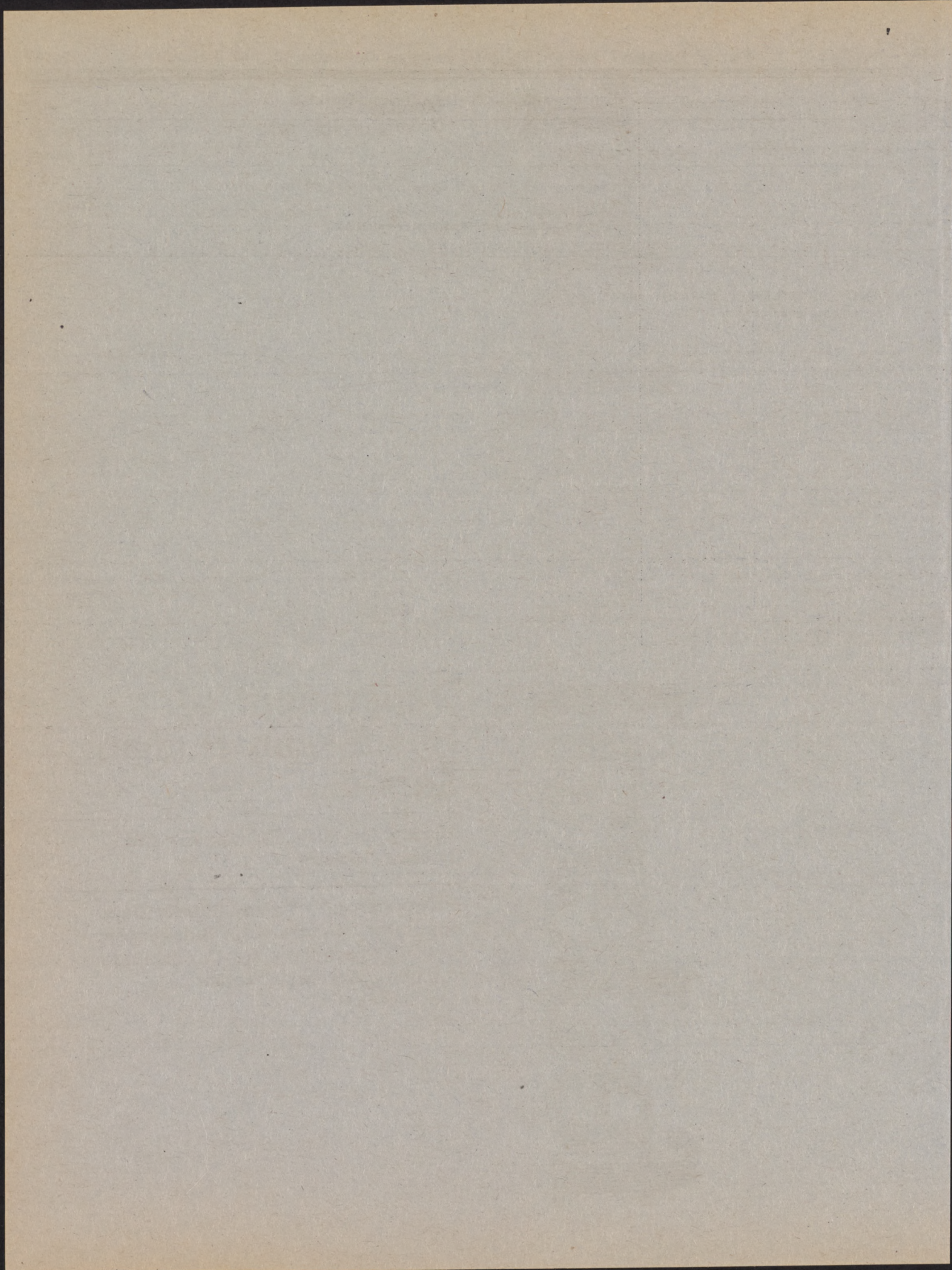
## REHABILITATION SHORT-TERM TRAINING PROGRAM

CFDA No.	Priority areas	Estimated range of awards	Estimated no. of awards
84.246D.....	Functional assessment of individuals with cognitive disabilities.	\$140,000 to \$170,000.....	1
84.246E.....	Training rehabilitation practitioners and educators on provisions of the Individuals with Disabilities Education Act (IDEA).	\$140,000 to \$170,000.....	1

[FR Doc. 92-27635 Filed 11-13-92; 8:45 am]

BILLING CODE 4000-01-M







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**Monday**  
**November 16, 1992**

**Environmental  
Health  
Perspectives**

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**Part III**

**Department of  
Health and Human  
Services**

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**Agency for Toxic Substances and  
Disease Registry**

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**Announcement of Final Priority Data  
Needs for 38 Hazardous Substances;  
Revised Procedures for Conducting  
Voluntary Research; Notice**



**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Agency for Toxic Substances and Disease Registry****[ATSDR-55]****Announcement of Final Priority Data Needs for 38 Priority Hazardous Substances**

**AGENCY:** Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** This notice announces the final priority data needs for 38 priority hazardous substances, identified by the ATSDR Substance-Specific Applied Research Program as mandated by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) (42 U.S.C. 9604 (i)). These final priority data needs, initially announced in the *Federal Register* on October 17, 1991, (56 FR 52178), have been prioritized across substances based on principles discussed in ATSDR's "Decision Guide for Identifying Substance-Specific Data Needs Related to Toxicological Profiles" (54 FR 37618, September 11, 1989).

The exposure and toxicity priority data needs contained in this notice were determined from information gaps identified in the ATSDR Toxicological Profiles. The priority data needs represent essential information required by ATSDR and state agencies to perform public health assessments of persons at risk of exposure to substances released from hazardous waste sites. Research to fill these data needs will contribute to determining the types and/or levels of exposure that may present significant risks of adverse health effects in humans exposed to the subject substances.

The priority data needs identified in this notice reflect the opinion of the Agency, in consultation with other Federal programs, of the research necessary for fulfilling its statutory mandate under CERCLA and are not intended to represent the priority data needs for any other program.

Consistent with section 104(i)(12) of CERCLA, as amended by SARA (42 U.S.C. 9604(i)(12)), nothing in this research program shall be construed to delay or otherwise affect or impair the authority of the President, the Administrator of ATSDR, or the Administrator of the Environmental Protection Agency (EPA) to exercise any

authority of the President, the Administrator of ATSDR, or the Administrator of EPA under any other provision of law, or the response and abatement authorities of CERCLA.

The 38 substances, each of which is found on ATSDR's "List of Priority Hazardous Substances" (56 FR 52166, October 17, 1991), are aldrin/dieldrin, arsenic, benzene, beryllium, cadmium, carbon tetrachloride, chloroethane, chloroform, chromium, cyanide, p,p'-DDT, DDE, DDD, di(2-ethylhexyl)phthalate, lead, mercury, methylene chloride, nickel, polychlorinated biphenyl compounds, polycyclic aromatic hydrocarbons (includes 15 substances), selenium, tetrachloroethylene, toluene, trichloroethylene, vinyl chloride, and zinc.

The priority data needs for these 38 substances were initially announced by ATSDR in the *Federal Register* on October 17, 1991 (56 FR 52178). The public was invited to comment on the priority data needs during a 90-day period, which was extended by 45 days. ATSDR received comments from academic institutions, industry groups, law firms, health groups, environmental groups, and government agencies concerning programmatic and substance-specific issues pertaining to the implementation of the research program. The Agency has identified three major issues as a result of the comments received from the public relating to the priority data needs for the 38 hazardous substances. These issues are presented below along with the Agency's responses. ATSDR has also responded to the substance-specific comments for the 38 priority hazardous substances, and has finalized the "Priority Data Needs" documents for these 38 hazardous substances. Both the "Response to Public Comments" documents and the revised "Priority Data Needs" documents are available for public inspection at ATSDR (see **ADDRESSES** section).

Private sector organizations that agreed with the priority of the data needs were encouraged to volunteer to conduct research to fill specific priority data needs initially announced in the *Federal Register* notice on October 17, 1991 (56 FR 52178). A Triagency Superfund Applied Research Committee composed of scientists from ATSDR, the National Toxicology Program (NTP), and the Environmental Protection Agency (EPA) was established to review all voluntary research efforts proposed. This notice serves as the second call for private sector voluntarism.

**DATES:** The ATSDR considers the voluntary research effort to be of significant importance to the continuing development of the Substance-Specific Applied Research Program, and believes this effort should be an open and continuous one. Therefore, private sector organizations are encouraged to volunteer to conduct research to fill identified data needs, beginning with the publication of this notice, and until that time when ATSDR announces that research has been initiated for a specific data need.

**ADDRESSES:** Private sector organizations interested in volunteering to conduct research to fill identified data needs should announce their intention by writing to Dr. William Cibulas, Division of Toxicology, Research Implementation Branch, Agency for Toxic Substances and Disease Registry, Mailstop E-29, 1600 Clifton Road NE., Atlanta, Georgia 30333. Requests for the revised "Priority Data Needs" documents, "Response to Public Comments" documents, and the "Cross-Substance Priorities" document should be addressed similarly.

The revised "Priority Data Needs" documents and the "Response to Public Comments" documents are available for public inspection at the Agency for Toxic Substances and Disease Registry, Building 4, suite 2400, Executive Park Drive, Atlanta, Georgia (not a mailing address), from 8 a.m. until 4:30 p.m., Monday through Friday, except for legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. William Cibulas, Division of Toxicology, Research Implementation Branch, Agency for Toxic Substances and Disease Registry, Mailstop E-29, 1600 Clifton Road NE., Atlanta, Georgia 30333, telephone (404) 639-6306.

**SUPPLEMENTARY INFORMATION:****Background**

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) [42 U.S.C. 9604(i)], requires that ATSDR (1) develop jointly with the Environmental Protection Agency (EPA) a list of hazardous substances found at National Priorities List (NPL) sites, (in order of priority), (2) prepare Toxicological Profiles for these substances, and (3) assure the initiation of a research program to fill identified data needs associated with the substances.

The identification of the priority data needs for 38 priority hazardous substances was announced in the *Federal Register* on October 17, 1991 (56



FR 52178), public comments were requested, and private sector organizations were invited to volunteer to conduct research to fill specific priority data needs. Future **Federal Register** notices will announce the names of private sector organizations that have volunteered for this purpose.

It should be noted that some commenters drew attention to a number of studies (e.g., industry reports and ongoing studies) which are not currently included in ATSDR's "Priority Data Needs" documents and which, according to the commenters, will fill ATSDR's identified priority data needs. ATSDR has requested copies of these studies from the commenters and will evaluate them as they are made available to the Agency. Any revision of the final priority data needs as a result of ATSDR's evaluation of these additional studies will be announced in future **Federal Register** notices. Furthermore, it is generally the practice of ATSDR not to assign priority to a data need if scientifically credible ongoing research has been identified. ATSDR will await the completion and evaluation of the study to determine the adequacy of the study to fill the Agency's data need. This is particularly true for Levels I and II research with accepted guidelines and testing protocols. However, for the more basic research oriented priority data needs (Level III), such as mechanistic studies, it would be less evident if one or several studies would be sufficient to fill the Agency's data need. Under such circumstances, ATSDR may continue to identify these data needs as priority in the face of ongoing research. However, in order to avoid duplication, the Agency would coordinate its research efforts to fill the priority data needs with those organizations conducting the ongoing studies.

**Note:** Levels I, II, and III research refers to a tiered approach to data collection defined in the ATSDR "Decision Guide for Identifying Substance-Specific Data Needs Related to Toxicological Profiles" (54 FR 37618, September 11, 1989).

The major goals of the ATSDR Applied Research Program are to fill the substance-specific information needs of the public and scientific community; and to supply necessary information for conducting comprehensive public health assessments of populations living in the vicinity of hazardous waste sites. This program also will provide data that can be generalized to other substances or areas of science, including risk assessments of chemicals, thus creating a scientific base for filling a broader range of data needs.

CERCLA, as amended in section 104(i)(5)(D), states that it is the sense of Congress that the costs for conducting this research program be borne by the manufacturers and processors of the hazardous substances under the Toxic Substances Control Act (TSCA) and registrants under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), or by cost recovery from responsible parties under CERCLA. To effect this statutory intent, ATSDR has developed a plan whereby portions of this CERCLA Substance-Specific Applied Research Program will be conducted via regulatory mechanisms (TSCA/FIFRA), private sector voluntarism, and through the direct use of CERCLA funds. A triagency Superfund Applied Research Committee comprised of scientists from ATSDR, the National Toxicology Program (NTP), and the EPA has been set up to (1) advise on the assignment of priorities on mechanisms for filling data needs, i.e., via EPA TSCA/FIFRA, private sector voluntarism, or Superfund; (2) coordinate knowledge of research activities to avoid duplication of research being conducted in other programs and under other authorities; (3) advise on issues of science related to substance-specific data needs; and (4) maintain a scheduled forum that provides an overall review of the ATSDR Superfund Applied Research Program. The first meeting of this triagency research committee was held on April 20, 1992, to inform the Committee on the Agency's progress in implementing the Substance-Specific Applied Research Program, and to seek the Committee's input in planning for the Agency's public meeting on voluntary research scheduled for April 29, 1992. It should be noted that a number of data needs are potentially being addressed through ATSDR's research program in cooperation with the Association of Minority Health Professions Schools (AMHPS), and through the Agency's Great Lakes Research Program.

#### *A. Major Issues Identified as a Result of Comments Received From the Public and ATSDR's Response*

As mentioned in the **SUMMARY** section of this notice, ATSDR has identified 3 major issues as a result of the comments received from the public relating to the priority data needs for the 38 hazardous substances. These issues and ATSDR's responses are presented below:

##### **(1) Issue: Epidemiology**

It may not be possible to identify appropriate populations of sufficient size at hazardous waste sites for the

purpose of conducting epidemiologic studies. Also, it will be difficult to establish causal relationships for a particular chemical in these studies since the populations would be exposed to a mixture of chemicals at waste sites. Finally, it is unlikely that biologic endpoints can be detected since these populations are exposed to very low levels of the chemicals at these waste sites.

**Response:** Previously, ATSDR has considered that two types of epidemiologic studies (substance-specific, and site-specific) may be conducted via its Substance-Specific Applied Research Program. Substance-specific epidemiologic studies are designed to determine substance-specific cause and effect. In this case, ATSDR is not directed toward populations necessarily exposed via the environment at waste sites. Instead, any appropriate population of suitable exposure via the environment, consumer products, or occupation can be used to design a rigorous analytic epidemiological investigation. Alternatively, in the second type of epidemiologic study, ATSDR is concerned about the need to study site-specific populations at waste sites to address the mandates of the Agency under Superfund. Upon evaluation of the public comments on data needs for epidemiologic studies, ATSDR has decided that the Agency's Substance-Specific Applied Research Program will address only substance-specific epidemiologic studies. The data needs for epidemiologic studies have been revised accordingly.

The ATSDR "Decision Guide for Identifying Substance-Specific Data Needs Related to Toxicological Profiles" discussed a tiered approach to data collection that begins with a base set of information for identifying substance-specific exposure and toxicity concerns (Level I); followed by confirmation of the toxicity and exposure indicated at level I (Level II), and concludes with a program of research that is directly applicable to humans (Level III). These Level III data needs include an assessment of the need to conduct epidemiological studies. Generally, for these well studied 38 substances, an extensive amount of animal data, and some human data, have already been collected; and ATSDR believes that it is appropriate, where feasible, to conduct epidemiologic studies on such substances.

In response to public comments, ATSDR has reevaluated the priority of the data needs for epidemiologic studies on a substance-by-substance basis,



using the tiered approach described above. Briefly, a data need for epidemiologic studies is considered a priority if level I and II data indicate sensitive target organs in animals for which epidemiologic data are either not available, or are limited or equivocal. This priority data need will be further classified as a Group A priority data need if no human data are available, or a Group B priority data need if limited or equivocal human data are available. A more detailed description of Group A and Group B priority data needs can be found under paragraph B. Cross-Substance Priorities of this **Federal Register** notice. For those substances for which target organs have been clearly defined in humans, or for which level I and II data are not available or are inadequate, epidemiologic studies will either not be considered a data need, or in some cases, a data need but not a priority data need.

As a result of the reevaluation of the database for the 38 priority hazardous substances, the priority of the data needs for epidemiologic studies and some of the associated endpoints of concern have been revised (table 1). Specifically, the priority data need for benzene, PCBs, chloroform, PAHs, trichloroethylene, cyanide, and selenium have been changed from Group A to Group B. Furthermore, the priority data needs for epidemiologic studies for lead, mercury, vinyl chloride, DDT, tetrachloroethylene, carbon tetrachloride, and chloroethane have been changed to data needs, and therefore, deleted from table 1.

#### (2) Issue: Physiologically Based Pharmacokinetic Modeling (PBPK)

ATSDR must put into practice its acknowledgement of the utility of available pharmacokinetic and metabolic data to extrapolate the results of existing inhalation studies to drinking water exposure scenarios. Furthermore, ATSDR should use physiologically based pharmacokinetic (PBPK) models for volatile organic compounds (VOCs) to extrapolate data from the inhalation studies to oral exposure.

*Response:* ATSDR believes that PBPK models can serve as a valuable tool in predicting across route similarities (and differences) in toxicological responses to hazardous substances. Had the goal of the ATSDR research program been only to derive a predicted NOAEL or LOAEL for these endpoints, PBPK modeling may have been appropriate. However, a major goal of the ATSDR substance-specific applied research program is to characterize the toxicity of the identified priority hazardous substances where data are lacking; and

this cannot be accomplished by modeling. However, ATSDR will continue to provide the private sector an opportunity to present compelling evidence that would convince the Agency that a priority data need can be filled by using existing information and models. This is consistent with the Agency's desire to develop a program that is receptive to innovative ideas for addressing its priority data needs.

Within the guidelines of the Agency's voluntary research program, information submitted by the private sector, regarding the use of PBPK models to fill priority data needs, will be reviewed by the Triagency Superfund Applied Research Committee. This information should include at a minimum (1) the identity of the priority data need being addressed; (2) a copy of the available PBPK models; (3) evidence that the model has been properly validated; (4) a concise description of the available substance-specific physicochemical, biochemical, toxicokinetic and mechanistic data available for application of the model; (5) results from the modeling exercise; and (6) a concise description of the inherent process uncertainties.

Currently, several models for volatile organic compounds (VOCs) exist with varying degrees of complexity and applicability. However, much work is needed to further refine and validate existing models and to develop new models. Several factors (e.g., complexities of various organ systems as portals of entry; human variability factors affecting absorption; possibility of chemical transformation before or during absorption; and "first pass" effects) preclude the utilization of PBPK models at this time for filling the data needs for the VOCs.

In the "Priority Data Needs" documents for carbon tetrachloride, chloroethane, chloroform, methylene chloride, tetrachloroethylene, and trichloroethylene, ATSDR has identified the need to conduct acute-, intermediate- and chronic-duration toxicity, developmental toxicity, immunotoxicity, neurotoxicity or reproductive toxicity studies following oral exposure. ATSDR does not believe that sufficient inhalation toxicity data are available on all of these toxicological endpoints for these VOCs, nor does the Agency consider that the biochemical and toxicokinetic interactions of these substances in the body have been sufficiently detailed to allow for accurate description of the predicted toxicity following oral exposure.

#### (3) Issue: Speciation of Metals

ATSDR must identify the form(s) of the metals to be studied and present the rationale for its decision since differences in toxicity exist among the various forms of metals. Furthermore, ATSDR should place more focus on research in species-specific exposures and the analytical tools needed for their detection.

*Response:* ATSDR concurs with the fact that there is a need for more information on the speciation of compounds, especially metals, in the environment, and that this issue should be given high priority. However, it may not be possible to adequately assess exposure to the different forms, or states, of the metals until standard analytical methodologies have been developed to adequately identify and quantitate the different salt forms or oxidation states. Therefore, at the present time, the Agency needs to rely on and be concerned with exposure due to total amount of the metal present at the waste sites. ATSDR, in its dialogue with the EPA, will continue to indicate its need for environmental monitoring data useful for addressing this issue of speciation of waste sites.

Furthermore, ATSDR has developed a document responding to all other generic issues resulting from public comments on the priority data needs. This document is available by writing to the Agency (see **ADDRESSES** section).

#### B. Cross-Substance Priorities

As the next step in implementing ATSDR's substance-specific research program, ATSDR must determine, through prudent public health considerations, which of the substance-specific priority data needs should be addressed most urgently. Toward that end, ATSDR has developed cross-substance prioritization guidelines. The logic for accomplishing this objective was described in the Agency's "Decision Guide" and in ATSDR's "Cross-Substance Priorities" document (available by writing to ATSDR, see **ADDRESSES** section). In the cross-substance prioritization procedure, the ranking of the 38 substances is based on the ATSDR's "Priority List of Hazardous Substances." The substance-specific priority data needs are divided into Groups A and B. Group A priority data needs are the highest ranked priority data needs while Group B are priority data needs that will be filled pending the results of Group A testing or that are not of the most urgent public health concern to ATSDR at the present time. No hierarchies are set among any one



substance's Group A or Group B priority data needs. Reassignments between priority data need groups will be considered by ATSDR on a substance-by-substance basis pending the collection and evaluation of additional data.

#### *C Substance-Specific Priority Data Needs*

The final priority data needs for the 38 priority hazardous substances are presented in Table 1. These substances are ranked in descending order according to the ATSDR's "Priority List of Hazardous Substances." Collectively, the Agency considers the Group A priority data needs to be of higher priority than Group B priority data needs. Both Groups A and B priority data needs are considered available for conduct at the discretion of ATSDR and/or EPA via mechanisms that included TSCA/FIFRA, private sector voluntarism or CERCLA.

As previously stated, ATSDR considers that a portion of this research will be most appropriately conducted using CERCLA data and resources. Toward that end, ATSDR has identified particular data needs that will be considered for implementation by other ATSDR programs (table 2). These priority data needs are discussed below.

#### *Exposure Levels in Environmental Media*

A major exposure priority is to collect, evaluate, and interpret data from

contaminated media around hazardous waste sites; and this has been identified as a priority data need for all 38 substances in the "Priority Data Needs" documents. However, ATSDR realizes that a large amount of information has already been collected through individual state programs and the EPA's CERCLA activities; therefore, ATSDR will evaluate the extant information from these programs in order to help fill data needs on substance-specific exposures. Therefore, the Agency decided not to include this priority data need, Exposure Levels in Environmental Media, in Table 2 of this notice.

#### *Exposure Levels in Humans and Registry of Exposed Persons*

ATSDR's role as a public health agency addressing environmental health is, where appropriate, to collect human data to validate substance-specific exposure and toxicity findings. Thus, information on levels of contaminants in humans has been identified as a priority data need for all 38 priority substances (table 2). This information will be obtained by ATSDR through the conduct of exposure and health effects studies, and through the establishment and use of substance-specific subregistries of persons potentially exposed to these substances within the Agency's National Exposure Registry. When a human exposure study, or a subregistry is identified as a priority data need, the responsible ATSDR program will consider this recommendation and

determine its feasibility, dependent on identifying appropriate populations and funding (table 2). These priority data needs may be reclassified following considerations of feasibility, and any reclassification will be published in the **Federal Register**.

ATSDR acknowledges that the conduct of human studies to determine possible linkages between exposure to hazardous substances and human health effects may be accomplished other than by Agency programs, or under other ATSDR-sponsored auspices. Toward that end, the private sector and other government programs are encouraged to use ATSDR's priority data needs to plan their research activities, i.e., to identify appropriate populations and conduct studies addressing the specific human health issues.

The results of the research conducted via this ATSDR Substance-Specific Applied Research Program will be used for public health assessment purposes and to reassess ATSDR's substance-specific priority data needs. It is the intention of the Agency, at this time, to re-evaluate the priority data needs for hazardous substances every three years.

Dated: November 2, 1992.

**William L. Roper,**

*Administrator, Agency for Toxic Substances and Disease Registry.*

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Table 1. - Substance-Specific Priority Data Needs\*

Substance	Group A	Group B
Lead	Mechanistic studies on the neurotoxic effects of lead	Analytical methods for tissue levels
Arsenic	Comparative toxicokinetic studies to determine if an appropriate animal species can be identified	Half-lives in surface water, groundwater Bioavailability from soil
Mercury	Multigeneration reproductive toxicity study via oral exposure	Immunotoxicology battery of tests via oral exposure
Vinyl Chloride	Dose-response data in animals for acute-duration inhalation exposure  Multigeneration reproductive toxicity study via inhalation	Dose-response data in animals for chronic-duration inhalation exposure  Mitigation of vinyl chloride-induced toxicity  2-species developmental toxicity study via inhalation
Benzene	Dose-response data in animals for acute- and intermediate-duration oral exposure. The subchronic study should include an extended reproductive organ histopathology  2-species developmental toxicity study via oral exposure  Neurotoxicology battery of tests via oral exposure	Epidemiological studies on the health effects of benzene (Special emphasis endpoints include: immunotoxicity)
Cadmium	None	Analytical methods for biological tissues and fluids and environmental media.
PCBs	Dose-response data in animals for acute- and intermediate-duration oral exposures	Biodegradation of PCBs in air and water  Bioavailability in of PCBs in air, water and soil  Dose-response data in animals for acute- and intermediate-duration inhalation exposures. The subchronic study should include extended reproductive organ histopathology  Epidemiological studies on the health effects of PCBs (Special emphasis endpoints include: immunotoxicity, gastrointestinal toxicity, liver, kidney, thyroid toxicity, reproductive and developmental toxicity)
Chloroform	Dose-response data in animals for intermediate-duration oral exposure	Epidemiological studies on the health effects of chloroform (Special emphasis endpoints include: cancer, neurotoxicity, reproductive and developmental toxicity, hepatotoxicity, and renal toxicity)



Substance	Group A	Group B
PAHs	<p>Dose-response data in animals for intermediate duration oral exposures. The subchronic study should include extended reproductive organ histopathology and immunopathology</p> <p>2-Species developmental toxicity study via inhalation or oral exposure</p> <p>Mechanistic studies on PAHs, on how mixtures of PAHs can influence the ultimate activation of PAHs, and on how PAHs affect rapidly proliferating tissues</p>	<p>Dose-response data in animals for acute- and intermediate-duration inhalation exposures. The subchronic study should include extended reproductive organ histopathology and immunopathology</p> <p>Epidemiological studies on the health effects of PAHs (Special emphasis endpoints include: cancer, dermal toxicity, hemolymphatic, and hepatic)</p>
Trichloro-ethylene	<p>Dose-response data in animals for acute-duration oral exposure</p>	<p>Neurotoxicology battery of tests via the oral route</p> <p>Immunotoxicology battery of tests via the oral route</p> <p>Epidemiological studies on the health effects of trichloroethylene (Special emphasis endpoints include: cancer, hepatotoxicity, renal toxicity, developmental toxicity, and neurotoxicity)</p>
DDT	<p>Dose-response data in animals for chronic-duration oral exposure</p> <p>Comparative toxicokinetic study (across routes/species)</p>	<p>Bioavailability and bioaccumulation from soil</p> <p>Epidemiological studies on the health effects of DDT, DDD and DDE (Special emphasis endpoints include: immunotoxicity, reproductive and developmental toxicity)</p>
Chromium	<p>Dose-response data in animals for acute-duration exposure to chromium(VI) and (III) via oral exposure and for intermediate-duration exposure to chromium (VI) via oral exposure</p> <p>Multigeneration reproductive toxicity study via oral exposure to chromium (III) and (VI)</p>	<p>Immunotoxicology battery of tests following oral exposure to chromium (III) and (VI)</p> <p>2-species developmental toxicity study via oral exposure to chromium (III) and (VI)</p>
Tetrachloro-ethylene	<p>Dose-response data in animals for acute-duration oral exposure, including neuropathology and demeanor, and immunopathology</p> <p>Multigeneration reproductive toxicity study via oral exposure</p>	<p>Dose-response data in animals for chronic-duration oral exposure, including neuropathology and demeanor, and immunopathology</p> <p>2-Species developmental toxicity study via oral exposure</p>
Aldrin/Dieldrin	<p>Dose-response data in animals for intermediate-duration oral exposure</p>	<p>Bioavailability from soil</p>
Cyanide	<p>Dose-response data in animals for acute- and intermediate-duration exposures via inhalation. The subchronic study should include extended reproductive organ histopathology and evaluation of neurobehavioral and neuropathological endpoints</p> <p>2-Species developmental toxicity study via oral exposure</p>	<p>Evaluation of the environmental fate of cyanide in soil</p>



Substance	Group A	Group B
Carbon Tetra-chloride	Dose-response data in animals for chronic oral exposure. The study should include extended reproductive organ and nervous tissue (and demeanor) histopathology	Immunotoxicology battery of tests via oral exposure Half-life in soil
Beryllium	Dose-response data in animals for acute- and intermediate-duration inhalation exposures. The subchronic study should include extended reproductive organ histopathology  2-species developmental toxicity study via inhalation exposure	Environmental fate in air Factors affecting bioavailability in air Analytical methods to determine environmental speciation Immunotoxicology battery of tests following oral exposure
Toluene	Dose-response data in animals for acute- and intermediate-duration oral exposures. The subchronic study should include an extended histopathological evaluation of the immune system  Comparative toxicokinetic studies (Characterization of absorption, distribution, and excretion via oral exposure)  Neurotoxicology battery of tests via oral exposure	Mechanism of toluene-induced neurotoxicity
Nickel	Epidemiological studies on the health effects of nickel (Special emphasis endpoints include: reproductive toxicity)  2-species developmental toxicity study via the oral route  Dose-response data in animals for acute- and intermediate-duration oral exposures	Neurotoxicology battery of tests via oral exposure Bioavailability of nickel from soil
Methylene Chloride	Dose-response data in animals for acute- and intermediate-duration oral exposure. The subchronic study should include extended reproductive organ histopathology, neuropathology and demeanor, and immunopathology  2-species developmental toxicity study via the oral route	None
Zinc	Dose-response data in animals for acute- and intermediate-duration oral exposures. The subchronic study should include an extended histopathological evaluation of the immunologic and neurological systems  Multigeneration reproductive toxicity study via oral exposure  Carcinogenicity testing (2-year bioassay) via oral exposure	None



Substance	Group A	Group B
DEHP	<p>Epidemiological studies on the health effects of DEHP (Special emphasis endpoints include: cancer)</p> <p>Dose-response data in animals for acute- and intermediate-duration oral exposures. The subchronic study should include an extended histopathological evaluation of the immunologic and neurologic systems</p> <p>Multigeneration reproductive toxicity study via oral exposure</p> <p>Comparative toxicokinetic studies (Studies designed to examine how mammals metabolize and distribute DEHP as compared to rodents via oral exposure)</p>	None
Selenium	<p>Dose-response data in animals for acute-duration oral exposure</p>	<p>Immunotoxicology battery of tests via oral exposure</p> <p>Epidemiological studies on the health effects of selenium (Special emphasis endpoints include: cancer, reproductive and developmental toxicity, hepatotoxicity, dermal toxicity, and neurotoxicity)</p>
Chloroethane	<p>Dose-response data in animals for acute- and intermediate-duration oral exposures. The subchronic study should include an evaluation of immune and nervous system (and behavior, demeanor) tissues, and extended reproductive organ histopathology</p>	<p>Dose-response data in animals for chronic inhalation exposures. The study should include an evaluation of nervous system (and behavior) tissues</p>

Mechanisms for filling substance-specific priority data needs include TSCA/FIFRA, private sector volunteerism, or CERCLA.



Table 2. - Substance-Specific Priority Data Needs for Consideration by ATSDR Programs\*

SUBSTANCE	PRIORITY HUMAN DATA NEED
Lead	Exposure levels in humans living near hazardous waste sites and other populations, such as workers exposed to lead.
Arsenic	Exposure levels in humans living near hazardous waste sites and other populations, such as workers exposed to arsenic.
Mercury	Exposure levels in humans living near hazardous waste sites and other populations, such as workers exposed to mercury. Potential candidate for subregistry of exposed persons.
Vinyl Chloride	Exposure levels in humans living near hazardous waste sites and other populations, such as workers exposed to vinyl chloride. Potential candidate for subregistry of exposed persons.
Benzene	Exposure levels in humans living near hazardous waste sites and other populations, such as workers exposed to benzene.
Cadmium	Exposure levels in humans living near hazardous waste sites and other populations, such as workers exposed to cadmium.
PCBs	Exposure levels in humans living near hazardous waste sites and other populations, such as workers exposed to PCBs.
Chloroform	Exposure levels in humans living near hazardous waste sites and other populations, such as workers exposed to chloroform. Potential candidate for subregistry of exposed persons.
PAHs	Exposure levels in humans living near hazardous waste sites and other populations, such as workers exposed to PAHs. Potential candidate for subregistry of exposed persons.
Trichloroethylene	Exposure levels in humans living near hazardous waste sites and other populations, such as workers exposed to trichloroethylene.
DDT	Exposure levels in humans living near hazardous waste sites and other populations, such as workers exposed to DDT. Potential candidate for subregistry of exposed persons.
Chromium	Exposure levels in humans living near hazardous waste sites and other populations, such as workers exposed to chromium.
Tetrachloroethylene	Exposure levels in humans living near hazardous waste sites and other populations, such as workers exposed to tetrachloroethylene. Potential candidate for subregistry of exposed persons.
Aldrin/Dieldrin	Exposure levels in humans living near hazardous waste sites and other populations, such as workers exposed to aldrin/dieldrin. Potential candidate for subregistry of exposed persons.
Cyanide	Exposure levels in humans living near hazardous waste sites and other populations, such as workers exposed to cyanide. Potential candidate for subregistry of exposed persons.
Carbon Tetrachloride	Exposure levels in humans living near hazardous waste sites and other populations, such as workers exposed to carbon tetrachloride. Potential candidate for subregistry of exposed persons.
Beryllium	Exposure levels in humans living near hazardous waste sites and other populations, such as workers exposed to beryllium.
Toluene	Exposure levels in humans living near hazardous waste sites and other populations, such as workers exposed to toluene.



SUBSTANCE	PRIORITY HUMAN DATA NEED
Nickel	Exposure levels in humans living near hazardous waste sites and other populations, such as workers exposed to nickel.
Methylene Chloride	Exposure levels in humans living near hazardous waste sites and other populations, such as workers exposed to methylene chloride. Potential candidate for subregistry of exposed persons.
Zinc	Exposure levels in humans living near hazardous waste sites and other populations, such as workers exposed to zinc.
DEHP	Exposure levels in humans living near hazardous waste sites and other populations, such as workers exposed to DEHP. Potential candidate for subregistry of exposed persons.
Selenium	Exposure levels in humans living near hazardous waste sites and other populations, such as workers exposed to selenium. Potential candidate for subregistry of exposed persons.
Chloroethane	Potential candidate for subregistry of exposed persons.

Mechanism for filling substance-specific priority data needs presently limited to considerations by ATSDR Programs.

[FR Doc. 92-27638 Filed 11-13-92; 8:45 am]

BILLING CODE 4160-70-C



**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Agency for Toxic Substances and Disease Registry**

[ATSDR-61]

**Revised Procedures For Conducting Voluntary Research**

**AGENCY:** Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** This notice announces the revised procedures for volunteering to conduct research as part of the ATSDR Substance-Specific Applied Research Program authorized by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), as amended. The procedures for conducting voluntary research were initially announced in the *Federal Register* on February 7, 1992 (57 FR 4758). The public was invited to comment on the procedures and the attendant Memorandum of Understanding (MOU). The voluntary research will be conducted by the private sector to fill priority data needs for hazardous substances that are the subjects of the ATSDR toxicological profiles. This notice describes the revised procedures.

**DATES:** The ATSDR considers this voluntary research effort to be of significant importance to the continuing development of the Substance-Specific Applied Research Program. Therefore, public comments concerning this *Federal Register* notice will be accepted throughout the Agency's involvement with voluntary research.

**ADDRESSES:** Comments on this notice should bear the docket control number ATSDR-61 and should be submitted to the Division of Toxicology, Research Implementation Branch, Agency for Toxic Substances and Disease Registry, Mailstop E-29, 1600 Clifton Road NE., Atlanta, Georgia 30333. Requests for a copy of the model Memorandum of Understanding should be addressed similarly.

Comments on this notice will be available for public inspection at the Agency for Toxic Substances and Disease Registry, Building 4, Suite 2400, Executive Park Drive, Atlanta, Georgia (not a mailing address), from 8 a.m. until 4:30 p.m., Monday through Friday, except for legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. William Cibulas, Division of Toxicology, Research Implementation Branch, Agency for Toxic Substances and Disease Registry, Mailstop E-29, 1600 Clifton Road NE., Atlanta, Georgia 30333, telephone 404-639-6306.

**SUPPLEMENTARY INFORMATION:****Background**

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (42 U.S.C. 9604(i)), requires that ATSDR: (1) Develop jointly with the Environmental Protection Agency (EPA) a list of hazardous substances found at National Priorities List (NPL) sites (in order of priority), (2) prepare toxicological profiles of these substances, and (3) assure the initiation of a research program to fill identified data needs associated with the substances.

The identification of the priority data needs for 38 priority hazardous substances was described in the *Federal Register* (56 FR 52178, October 17, 1991), public comments were invited, and companies were requested to volunteer to conduct research to fill specific priority data needs during the public comment period for that notice. The *Federal Register* notice, "Announcement of Final Priority Data Needs for 38 Priority Hazardous Substances", which includes a second call for private sector voluntarism, is being published in this issue of the *Federal Register*. Future *Federal Register* notices will announce the names of companies that have volunteered to fill specific priority data needs.

The major purpose of this ATSDR Substance-Specific Applied Research Program is to supplement the substance-specific information needs of the public and scientific community, and to supply necessary information for conducting comprehensive public health assessments for populations living in the vicinity of hazardous waste sites. This program will also provide data that can be generalized to other substances or areas of science, including risk assessments of chemicals, thus creating a scientific base for filling a broader range of data needs.

**Procedure for Conducting Voluntary Research**

CERCLA, as amended in section 104(i)(5)(D), states that it is the sense of Congress that the costs for conducting this research program be borne by the

manufacturers and processors of the hazardous substances under the Toxic Substances Control Act (TSCA) and registrants under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); or by cost recovery from responsible parties under CERCLA. Furthermore, section 104(i)(5)(C) states that in developing and implementing the research program, the Administrator of ATSDR and the Administrator of EPA shall coordinate such program with the National Toxicology Program (NTP) and with programs of toxicological testing established under TSCA and FIFRA. To achieve this coordination, ATSDR established the Triagency Superfund Applied Research Committee (TASARC) as a forum for ATSDR, EPA, and NTP to discuss and coordinate use of potential mechanisms for developing and implementing this CERCLA Substance-Specific Applied Research Program. Meetings of the TASARC are not open to the public. The first meeting of TASARC was held on April 20, 1992, to inform the Committee on the Agency's progress in implementing the Substance-Specific Applied Research Program, and to seek the Committee's input in planning for the Agency's public meeting on voluntary research held on April 29, 1992.

The ATSDR encourages private sector organizations to conduct voluntary research to fill specific priority data needs identified in the Agency's Substance-Specific Applied Research Program. Toward that end, the procedures for conducting voluntary research, and the attendant Memorandum of Understanding, were developed by ATSDR and announced in the *Federal Register* on February 7, 1992 (57 FR 4758). The Agency is aware of concerns within some segments of the public regarding voluntary research conducted by companies with vested interests in the research. Therefore, the Agency encouraged the public to comment on ATSDR's procedure for conducting voluntary research. Additionally, for each research project conducted voluntarily, the MOU (signed by ATSDR and the interested company), the ATSDR approved study plan, peer reviewer's comments, and the final research report and supporting data will be available for public inspection at the location and times indicated in the **ADDRESSES** section of this notice.

ATSDR intends to enter into voluntary research projects in ways that lead only to high quality scientific work. This necessitates peer review of study protocols and results consistent with CERCLA section 104(i)(13). CERCLA requires the peer review panel to consist



of three to seven peer reviewers who (a) are selected by the Administrator of ATSDR, (b) are disinterested scientific experts, (c) have a reputation for scientific objectivity, and (d) lack institutional ties with any person involved in the conduct of the study or research under review.

The ATSDR held a public meeting on April 29, 1992, to discuss the proposed procedures for voluntary research. Comments were received from industry groups, environmental groups and Federal agencies. As a result of discussions at these two meetings and other public comments received by the Agency, ATSDR has revised the voluntary research procedures. The major revisions and clarification of the procedures are described below.

ATSDR now believes that prior to negotiation of the study plan, it would be more appropriate to have a Letter of Intent submitted by the interested company, rather than to have the MOU signed by the interested company and the Agency as originally indicated. In the revised procedures, the interested company and ATSDR will enter into an MOU after the study plan has been approved by the Agency. Furthermore, the procedures will now indicate that ATSDR encourages innovative protocols, where appropriate. With respect to the role of peer review, ATSDR will continue to pursue its policy of peer review of both study protocols and results as mandated under CERCLA. However, to the extent that research protocols entail accepted test guidelines developed under TSCA, FIFRA or by organizations such as the Organization for Economic Cooperation and Development (OECD), less rigorous peer review of the study protocol may be required. Furthermore, the peer review process will not supersede the function of Institutional Review Board activities related to protection of human subjects or animals.

With respect to potential termination of the MOU at the convenience of either party, ATSDR intends that this action will be taken as a last resort, and that prior to such an action, all possible avenues of dialogue with the private sector organization would be pursued, within reasonable limits. However, decisions as to what constitutes a breach of the MOU will be at the discretion of ATSDR. Moreover, ATSDR recognizes that in the course of conducting research, unexpected and unanticipated delays may occur and wherever possible this will be negotiated with the private sector organization in the spirit of mutual cooperation.

The Agency is cognizant of the private sector's concern that EPA may require industry testing during or following a voluntary research effort with ATSDR which may be regarded as duplicative of that effort. There are several safeguards to prevent this from happening. First, ATSDR, EPA, and NTP are coordinating to conserve the testing resources of both the government and the private sector and avoid unnecessary or duplicative testing. This coordination occurs at many points: the review of ATSDR's toxicological profiles, review of ATSDR data needs documents, meetings of TASARC and the Interagency Testing Committee, and review of research proposals developed under ATSDR's voluntary research program. EPA intends to review research proposals developed under this program for conformity with basic testing concepts under TSCA, FIFRA, and the OECD.

Second, the Toxic Substances Control Act expressly requires EPA to find that data are inadequate to reasonably determine or predict the effects of a chemical substance. EPA has already interpreted this to mean that it cannot require duplicative testing. As a matter of policy EPA will not require testing in a rule which duplicates ongoing testing by government or the private sector pursuant to an MOU until the test data are submitted, reviewed and determined to be inadequate. There may be instances where research conducted under an industry/ATSDR MOU will yield results which indicate additional testing is necessary or where the testing under the MOU is not intended to address the endpoint of concern to EPA. In these cases, EPA may exercise its authority to require testing under TSCA or FIFRA.

It is generally the policy of ATSDR to rely on data and studies which are publicly available, with the exception of personally identifiable information on study projects. Therefore, research conducted under this program should be designed so as not to disclose Trade Secrets or other Confidential Business Information. If the company finds that such research is impossible to conduct under this restriction, ATSDR will enter into discussions of alternative solutions, or may choose to terminate negotiations.

Finally, in reference to research costs, the direct and indirect costs associated with the research program are those incurred by the research sponsor and not by ATSDR. The Agency will assume responsibility for administrative costs including the cost of peer review as part of its overall program.

The procedures for conducting voluntary research are described below.

Private sector organizations (companies) interested in volunteering to conduct research on priority data needs are asked to submit to ATSDR, in writing, a brief statement that addresses the priority data need(s) to be filled and the methods to be used. It should be noted that ATSDR encourages innovative protocols, where appropriate. Therefore, the interested company should indicate when innovative protocols are being proposed. Interested companies may address substance-specific data needs or, where appropriate, propose to conduct research that will provide information relevant to classes of chemical substances or which may be generalized to other areas of science. It should be noted that all voluntary research conducted to fill ATSDR's priority data needs should comply with the Department of Health and Human Services' Laboratory Animal Welfare Act of 1966 (Pub. L. 89-544, as amended, 7 U.S.C. 2131 et seq.) or Protection of Human Subjects (45 CFR part 46).

The interested company's statement will be reviewed by TASARC. Based on TASARC's recommendations, ATSDR will determine which, and how, specific voluntary research projects will be pursued with volunteering companies. In instances where volunteered research initiatives are considered by TASARC to be more appropriate for EPA response, EPA may negotiate directly with the interested company.

If ATSDR decides to pursue a specific voluntary research project submitted by a company, the Agency will request the company to forward a Letter of Intent within four weeks of the approval of the company's statement. The Letter of Intent should indicate that the company is prepared to enter into discussion with ATSDR regarding the research plan to fill a specific data need identified by the ATSDR Substance-Specific Applied Research Program. Furthermore, the Letter of Intent will state that if the research plan is approved by ATSDR, the company will negotiate an MOU with ATSDR prior to initiation of the research.

The Agency recognizes that two or more companies or a consortium of interested firms may elect to enter into collaborative efforts in pursuing one or more research projects, therefore, where appropriate, a single MOU will be signed between ATSDR and multiple companies. Following the submission of the Letter of Intent and prior to the initiation of the research, the interested company will negotiate with ATSDR to agree upon an approved study plan including testing protocols and time schedules.



The company shall submit to ATSDR a study plan for each test six weeks after submitting the Letter of Intent. The study plan shall include test protocols and a schedule with reasonable timetable and deadlines for initiation and completion of each test and submission of interim and final reports. The test protocols will be reviewed by an ATSDR-appointed peer review panel. If ATSDR disapproves the study plan, it will inform the company of the deficiencies of the plan. The company may request reconsideration of the study plan, resubmit a modified study plan, or elect to terminate further discussion on the proposed research with no obligation of either party. In the event that the company resubmits a modified study plan and ATSDR disapproves it, the Agency may elect to terminate further discussion.

If the study plan is approved by ATSDR upon the recommendations of the peer reviewers, the company will enter into an MOU with the Agency. The content of the MOU is described below:

(1) Identification of the party or parties comprising the company which enters into the MOU—This section consists of the name and address of each party responsible for the conduct of the research.

(2) Identification of the substance(s) subject to research requirements under the MOU—This section consists of the name and Chemical Abstract Service (CAS) Number of the chemical substance(s) that is the subject of the MOU. The chemical substance(s) to be tested shall be as pure as reasonably can be attained. However, under certain circumstances, ATSDR recognizes that it may be more desirable to test mixtures or technical grade products. Furthermore, alternate language will be substituted when the subject of the research is a human population, as in epidemiologic studies.

(3) Identification of the effects or characteristics for which research is to be conducted—In this section, the health effects, environmental fate or other characteristics for which research is to be conducted under the MOU shall be listed.

(4) Initiation of Research and Submission of Interim and Final Reports—The starting date of the research project may be negotiated depending on the type of research being conducted. However, as a general guideline, the research effort shall be initiated within eight weeks of the approval of the study plan and attendant test protocols, and the signing of the MOU. Written notification of the starting date of the test will be submitted to ATSDR by the company.

The testing schedule and completion date of the study will be established from the approved study plan. Interim progress reports shall be submitted to ATSDR within six months after the initiation of testing and thereafter within six months after submission of each previous interim report. The final report on the results of testing shall be submitted to ATSDR no more than 20 weeks following the end of the study. Final reports will not be accepted if the data are designated Confidential Business Information (CBI) or otherwise restricted from public disclosure, with the exception of personally identifiable information on study subjects. Moreover, ATSDR's acceptance of the final report will be contingent upon approval by ATSDR following the peer reviewers' recommendations, consistent with CERCLA section 104(i)(13) peer review requirements. All results of research conducted pursuant to the MOU and all supporting data associated with the research report will be provided to ATSDR and made available by the Agency to the public as part of its implementation of sections 104(i)(3) and (5) of CERCLA.

(5) Modifications of study plans, guidelines, and schedules—If a company intends to modify a study plan, protocol, or schedule that was approved by ATSDR, it must notify ATSDR in writing of the proposed modifications and reasons therefor. If ATSDR approves of the modifications, the time schedule established for completion of the tests shall be re-negotiated and appended to the existing MOU. If ATSDR disapproves the company's request and the company does not accept ATSDR's decision to disapprove the modified study plan, the company may terminate the MOU.

(6) Observance of Good Laboratory Practices—All research agreed to in the MOU shall be conducted in accordance with the Good Laboratory Practice (GLP) standards codified in 40 CFR part 792, to the extent that such GLP standards apply. Should Good Epidemiology Practices ("Guidelines for Good Epidemiology Practices for Occupational and Environmental Epidemiologic Research"—The Chemical Manufacturer Association's Epidemiology Task Group, Journal of Occupational Medicine, Volume 33, 1221-1229, 1991) be relevant to a research project, those Practices should be affixed to the study protocol.

(7) Inspections—The company shall ensure that authorized employees of ATSDR are permitted, at reasonable times and in a reasonable manner, to (i) inspect any research or testing facilities that is conducting research pursuant to

the MOU, and (ii) inspect (and in the case of records, copy) any records and specimens required to be maintained in connection with research performed pursuant to the MOU.

(8) Submission and publication of data—All data and reports submitted to ATSDR pursuant to the MOU shall be sent to ATSDR, in duplicate, at the address indicated in the ADDRESSES section. Final reports will not be accepted if the data is designated Confidential Business Information (CBI) or otherwise restricted from public disclosure. Furthermore, acceptance of the final report is contingent upon approval by ATSDR following the peer reviewers' recommendations, consistent with CERCLA peer review requirements. The company maintains all rights to publication of data and results, however all results of research conducted pursuant to the MOU and all supporting data associated with the final research report will be provided to ATSDR and made available by the Agency to the public as part of its implementation of section 104(i)(5) of CERCLA.

(9) Payments of costs and expenses—Each company shall agree to pay all costs, direct and indirect, associated with the research programs. The Agency will assume responsibility for administrative costs including the cost of peer review as part of its overall program.

(10) Events constituting a breach of the MOU—Failure by the company to:

(a) Initiate any test agreed to in the MOU by the date established pursuant to the MOU;

(b) Adhere to GLP standards, established test procedures or accepted practices of good science to the extent that these standards and practices apply;

(c) Submit any interim report required under the MOU by the date established pursuant to the MOU; or

(d) Submit any final report that receives ATSDR's approval following peer review conducted by the Agency, shall constitute a breach of the MOU. In the event of a breach, ATSDR will not impose any claim to damages, but at the Agency's discretion may terminate the MOU.

For research completed subsequent to termination of an MOU, or termination of negotiations in anticipation of an MOU, companies may not represent endorsement of such research by ATSDR based on ATSDR's approval of a study protocol, plan or other aspect of the research.

(11) Termination—Since the MOU is entered into voluntarily by ATSDR and the company, termination by ATSDR is



not considered reviewable agency action pursuant to the Administrative Procedures Act or any other applicable Federal law, and there will be no appeal process beyond that set out in the MOU. The company may elect to terminate the MOU at any time.

(12) Statutory compliance—Consistent with section 104(i)(12) of CERCLA, as amended (42 U.S.C. 9604(i)(12)), nothing in the MOU shall be construed to delay or otherwise affect or impair the authority of the President, the Administrator of ATSDR or the Administrator of EPA to exercise any of

their authority under any other provision of law, or the response and abatement authorities of CERCLA.

As previously stated, EPA is not currently planning to participate as a potential signatory in MOU negotiations arising from this Notice. However, if EPA were to participate, the contents described above would need to be appropriately revised to reflect commitments made by or to EPA, and other matters deemed appropriate by the parties.

The results of the research via this ATSDR Substance-Specific Applied

Research Program will be used for public health assessment purposes and to reassess ATSDR's substance-specific priority data needs. It is the intention of the Agency, at this time, to re-evaluate the priority data needs for the listed hazardous substances every three years.

Dated: November 6, 1992.

**William L. Roper,**

*Administrator, Agency for Toxic Substances and Disease Registry.*

[FR Doc. 92-27639 Filed 11-13-92; 8:45 am]

BILLING CODE 4160-70-M







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on 202-523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-2470). The list will be resumed when bills are enacted into public law during the first session of the 103rd Congress, which convenes on January 5, 1993. A cumulative list of Public Laws will be published in the **Federal Register** on Monday, November 23, 1992.

**H.R. 5377/P.L. 102-589**

Cash Management Improvement Act Amendments of 1992. (Nov. 10, 1992; 106 Stat. 5133; 3 pages) Price: \$1.00

**H.R. 5400/P.L. 102-590**

Homeless Veterans Comprehensive Service Programs Act of 1992. (Nov. 10, 1992; 106 Stat. 5136; 7 pages) Price: \$1.00

Last List November 12, 1992

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Free **Electronic Bulletin Board** Service for Public Law Numbers is available on 202-275-1538 or 275-0920.



## CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (\*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-017-00001-9)	\$13.00	Jan. 1, 1992
3 (1991 Compilation and Parts 100 and 101)	(869-017-00002-7)	17.00	Jan. 1, 1992
4	(869-017-00003-5)	16.00	Jan. 1, 1992
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1200-End, 6 (6 Reserved)	(869-017-00006-0)	19.00	Jan. 1, 1992
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27-45	(869-017-00008-6)	12.00	Jan. 1, 1992
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1060-1119	(869-017-00018-3)	13.00	Jan. 1, 1992
1120-1199	(869-017-00019-1)	9.50	Jan. 1, 1992
1200-1499	(869-017-00020-5)	22.00	Jan. 1, 1992
1500-1899	(869-017-00021-3)	15.00	Jan. 1, 1992
1900-1939	(869-017-00022-1)	11.00	Jan. 1, 1992
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1950-1999	(869-017-00024-8)	26.00	Jan. 1, 1992
2000-End	(869-017-00025-6)	11.00	Jan. 1, 1992
8	(869-017-00026-4)	17.00	Jan. 1, 1992
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400-499	(869-017-00032-9)	20.00	Jan. 1, 1992
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§§ 1.501-1.640	(869-017-00089-2)	19.00	Apr. 1, 1992
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40-49	(869-017-00097-3)	12.00	Apr. 1, 1992
50-299	(869-017-00098-1)	15.00	Apr. 1, 1992
300-499	(869-017-00099-0)	20.00	Apr. 1, 1992
500-599	(869-017-00100-7)	6.00	Apr. 1, 1990



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<b>27 Parts:</b>				1, 1-1 to 1-10		13.00	<sup>3</sup> July 1, 1984
1-199	(869-017-00102-3)	34.00	Apr. 1, 1992	1, 1-11 to Appendix, 2 (2 Reserved)		13.00	<sup>3</sup> July 1, 1984
200-End	(869-017-00103-1)	11.00	<sup>6</sup> Apr. 1, 1991	3-6		14.00	<sup>3</sup> July 1, 1984
<b>28</b>	(869-017-00104-0)	37.00	July 1, 1992	7		6.00	<sup>3</sup> July 1, 1984
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100-499	(869-013-00106-6)	9.00	July 1, 1992	10-17		9.50	<sup>3</sup> July 1, 1984
500-899	(869-013-00107-9)	27.00	July 1, 1991	18, Vol. I, Parts 1-5		13.00	<sup>3</sup> July 1, 1984
900-1899	(869-017-00108-2)	16.00	July 1, 1992	18, Vol. II, Parts 6-19		13.00	<sup>3</sup> July 1, 1984
1900-1910 (§§ 1901.1 to 1910.999)	(869-013-00109-5)	24.00	July 1, 1991	18, Vol. III, Parts 20-52		13.00	<sup>3</sup> July 1, 1984
1910 (§§ 1910.1000 to end)	(869-017-00110-4)	16.00	July 1, 1992	19-100		13.00	<sup>3</sup> July 1, 1984
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1926	(869-017-00112-1)	14.00	July 1, 1992	101	(869-013-00154-1)	22.00	July 1, 1991
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200-699	(869-017-00115-5)	19.00	July 1, 1992	1-60	(869-013-00157-5)	17.00	Oct. 1, 1991
700-End	(869-017-00116-3)	25.00	July 1, 1992	61-399	(869-013-00158-3)	5.50	Oct. 1, 1991
<b>31 Parts:</b>				400-429	(869-013-00159-1)	21.00	Oct. 1, 1991
0-199	(869-017-00117-1)	17.00	July 1, 1992	430-End	(869-013-00160-5)	26.00	Oct. 1, 1991
200-End	(869-017-00118-0)	25.00	July 1, 1992	<b>43 Parts:</b>			
<b>32 Parts:</b>				1-999	(869-013-00161-3)	20.00	Oct. 1, 1991
1-39, Vol. I		15.00	<sup>2</sup> July 1, 1984	1000-3999	(869-013-00162-1)	26.00	Oct. 1, 1991
1-39, Vol. II		19.00	<sup>2</sup> July 1, 1984	4000-End	(869-013-00163-0)	12.00	Oct. 1, 1991
1-39, Vol. III		18.00	<sup>2</sup> July 1, 1984	<b>44</b>	(869-013-00164-8)	22.00	Oct. 1, 1991
*1-189	(869-017-00119-8)	30.00	July 1, 1992	<b>45 Parts:</b>			
*190-399	(869-017-00120-1)	33.00	July 1, 1992	1-199	(869-013-00165-6)	18.00	Oct. 1, 1991
400-629	(869-017-00121-0)	29.00	July 1, 1992	200-499	(869-013-00166-4)	12.00	Oct. 1, 1991
630-699	(869-017-00122-8)	14.00	<sup>8</sup> July 1, 1991	500-1199	(869-013-00167-2)	26.00	Oct. 1, 1991
700-799	(869-017-00123-6)	20.00	July 1, 1992	1200-End	(869-013-00168-1)	19.00	Oct. 1, 1991
800-End	(869-017-00124-4)	20.00	July 1, 1992	<b>46 Parts:</b>			
<b>33 Parts:</b>				1-40	(869-013-00169-9)	15.00	Oct. 1, 1991
1-124	(869-017-00125-2)	18.00	July 1, 1992	41-69	(869-013-00170-2)	14.00	Oct. 1, 1991
125-199	(869-017-00126-1)	21.00	July 1, 1992	70-89	(869-013-00171-1)	7.00	Oct. 1, 1991
200-End	(869-017-00127-9)	23.00	July 1, 1992	90-139	(869-013-00172-9)	12.00	Oct. 1, 1991
<b>34 Parts:</b>				140-155	(869-013-00173-7)	10.00	Oct. 1, 1991
*1-299	(869-017-00128-7)	27.00	July 1, 1992	156-165	(869-013-00174-5)	14.00	Oct. 1, 1991
300-399	(869-017-00129-5)	19.00	July 1, 1992	166-199	(869-013-00175-3)	14.00	Oct. 1, 1991
400-End	(869-013-00130-3)	26.00	July 1, 1991	200-499	(869-013-00176-1)	20.00	Oct. 1, 1991
<b>35</b>	(869-017-00131-7)	12.00	July 1, 1992	500-End	(869-013-00177-0)	11.00	Oct. 1, 1991
<b>36 Parts:</b>				<b>47 Parts:</b>			
1-199	(869-017-00132-5)	15.00	July 1, 1992	0-19	(869-013-00178-8)	19.00	Oct. 1, 1991
200-End	(869-017-00133-3)	32.00	July 1, 1992	20-39	(869-013-00179-6)	19.00	Oct. 1, 1991
<b>37</b>	(869-013-00134-6)	15.00	July 1, 1991	40-69	(869-013-00180-0)	10.00	Oct. 1, 1991
<b>38 Parts:</b>				70-79	(869-013-00181-8)	18.00	Oct. 1, 1991
0-17	(869-013-00135-4)	24.00	July 1, 1991	80-End	(869-013-00182-6)	20.00	Oct. 1, 1991
18-End	(869-013-00136-2)	22.00	July 1, 1991	<b>48 Chapters:</b>			
<b>39</b>	(869-017-00137-6)	16.00	July 1, 1992	1 (Parts 1-51)	(869-013-00183-4)	31.00	Oct. 1, 1991
<b>40 Parts:</b>				1 (Parts 52-99)	(869-013-00184-2)	19.00	Oct. 1, 1991
1-51	(869-017-00138-4)	31.00	July 1, 1992	2 (Parts 201-251)	(869-013-00185-1)	13.00	Dec. 31, 1991
52	(869-013-00139-7)	28.00	July 1, 1991	2 (Parts 252-299)	(869-013-00186-9)	10.00	Dec. 31, 1991
53-60	(869-017-00140-6)	36.00	July 1, 1992	3-6	(869-013-00187-7)	19.00	Oct. 1, 1991
61-80	(869-017-00141-4)	16.00	July 1, 1992	7-14	(869-013-00188-5)	26.00	Oct. 1, 1991
81-85	(869-013-00142-7)	11.00	July 1, 1991	15-End	(869-013-00189-3)	30.00	Oct. 1, 1991
86-99	(869-017-00143-1)	33.00	July 1, 1992	<b>49 Parts:</b>			
100-149	(869-013-00144-3)	30.00	July 1, 1991	1-99	(869-013-00190-7)	20.00	Oct. 1, 1991
150-189	(869-017-00145-7)	21.00	July 1, 1992	100-177	(869-013-00191-5)	23.00	Dec. 31, 1991
190-259	(869-017-00146-5)	16.00	July 1, 1992	178-199	(869-013-00192-3)	17.00	Dec. 31, 1991
260-299	(869-013-00147-8)	31.00	July 1, 1991	200-399	(869-013-00193-1)	22.00	Oct. 1, 1991
300-399	(869-017-00148-1)	15.00	July 1, 1992	400-999	(869-013-00194-0)	27.00	Oct. 1, 1991
400-424	(869-017-00149-0)	26.00	July 1, 1992	1000-1199	(869-013-00195-8)	17.00	Oct. 1, 1991
425-699	(869-013-00150-8)	23.00	<sup>7</sup> July 1, 1989	1200-End	(869-013-00196-6)	19.00	Oct. 1, 1991
700-789	(869-013-00151-6)	20.00	July 1, 1991	<b>50 Parts:</b>			
790-End	(869-017-00152-0)	25.00	July 1, 1992	1-199	(869-013-00197-4)	21.00	Oct. 1, 1991
				200-599	(869-013-00198-2)	17.00	Oct. 1, 1991
				600-End	(869-013-00199-1)	17.00	Oct. 1, 1991
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<sup>1</sup> Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

<sup>2</sup> The July 1, 1985<sup>1</sup> edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

<sup>3</sup> The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

<sup>4</sup> No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1991. The CFR volume issued January 1, 1987, should be retained.

<sup>5</sup> No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1991. The CFR volume issued April 1, 1990, should be retained.

<sup>6</sup> No amendments to this volume were promulgated during the period Apr. 1, 1991 to Mar. 30, 1992. The CFR volume issued April 1, 1991, should be retained.

<sup>7</sup> No amendments to this volume were promulgated during the period July 1, 1989 to June 30, 1992. The CFR volume issued July 1, 1989, should be retained.

<sup>8</sup> No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1992. The CFR volume issued July 1, 1991, should be retained.